108-498

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

No. 203.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

LEOPOLD LUCHS.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MARCH 29, 1880.

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1 *Declaration.—Filed September 13th, 1876.*

In the supreme court of the District of Columbia.

LEOPOLD LUCHS *vs.* THE CONNECTICUT MUTUAL LIFE INSURANCE Company.	At law.	No. 16471.

The plaintiff sues the defendant, a body corporate, under the laws of the State of Connecticut.

1. For that heretofore, to wit, on the second day of June, A. D. 1869, the plaintiff had an insurable interest to the amount of over five thousand dollars in the life of one Levi Dillenberg, of the city of Washington, in the District of Columbia, and on said day, the defendant, by its policy of insurance, number 95299, in consideration of the sum of one hundred and twenty-five dollars ($125) to it in hand paid by the plaintiff, and of the annual premium of one hundred and twenty-five dollars, to be paid on or before the second day of June in every year during the continuance of said policy, did assure the life of said Levi Dillenberg in the amount
2 of five thousand dollars ($5,000), for the term of his life, and agreed to pay the said sum, or cause it to be paid to the plaintiff, within ninety days after due notice and proof of the death of said Levi Dillenberg; and the plaintiff duly paid said premiums down to and including the second day of June, A. D. 1875; and afterwards, to wit, on the eighth day of May, 1876, said Levi Dillenberg departed this life, due notice and proof of which fact were furnished to the defendant by the plaintiff thereafter, to wit, on the twenty-second day of May, A. D. 1876. More than ninety days after said last mentioned date, to wit, on the ninth day of September, A. D. 1876, the defendant informed the plaintiff that it will contest the claim of the plaintiff under said policy, and it has not paid the sum, nor any part thereof, to the damage of the plaintiff ten thousand dollars.

2. For money received by the defendant for the use of the plaintiff, and for money paid by the plaintiff for the defendant, at its request, and for money found to be due from the defendant to the plaintiff on accounts stated between them; and for interest due and owing from the defendant to
3 the plaintiff; and for money lent by the plaintiff to the defendant.

And the plaintiff claims five thousand dollars ($5,000), with interest from the twenty-second day of August, A. D. 1876, besides costs of suit.

STANTON & WORTHINGTON,
Attorneys for Plaintiff.

The defendant is to plead hereto on or before the first special term of the court occurring twenty days after service hereof; otherwise, judgment.

STANTON & WORTHINGTON,
Attorneys for Plaintiff.

In the supreme court of the District of Columbia.

LEOPOLD LUCHS
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company. } At law. No. 16471.

I, Leopold Luchs, on oath say that I am the plaintiff in this suit; that on the second day of June, A. D. 1869, Levi Dillenberg and myself were in business as partners in the city of Washington, and that I then
4 had an insurable interest in his life to the extent of over five thousand dollars ($5,000), to protect which he voluntarily proffered me the security of a policy of insurance on his life, and that on said date the policy of insurance, more particularly described in the annexed declaration, was issued to me by the defendant; that said Levi Dillenberg died on or about the 8th day of May, A. D. 1876, due notice and proof of which fact were given to the defendant by me on or about the 22nd day of May, 1876, yet the defendant refuses to pay the sum due me upon said policy, or any part thereof. All the premiums on said policy were paid as they fell due. I claim in this action, and there is due to me from the defendant, exclusive of all set-offs and just grounds of defence, five thousand dollars ($5,000), with interest from the 22nd day of August, 1876, and costs of suit.

LEOPOLD LUCHS.

Subscribed and sworn to before me this 16th day of September, 1876.
[NOTARIAL SEAL.] J. C. HEALD,
Notary Public.

5 *Summons.—Issued September 18th,* 1876.

In the supreme court of the District of Columbia.

LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company, defendant. } At law. No. 16471.

The President of the United States to the defendant, greeting:

You are hereby commanded to appear in this court on the first day of its special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit, and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness, D. K. Cartter, chief justice.
[SEAL OF COURT.] R. J. MEIGS, *Clerk,*
By J. R. YOUNG,
Ass't Clerk.

NOTE.—The special terms of the court commence on the first Tuesday of every month, except August, in which month there is no term of the court.

(On back:)

6 Served copies of the declaration, notice to plead, affidavit, and this summons, on the defendant, A. C. Gibbs, agent of co., the 22nd day of September, 1876.

ALEX. SHARP, *Marshal.*

Pleas.—Filed Nov. 2nd, 1876.

In the supreme court of the District of Columbia.

LEOPOLD LUCHS. *vs.* THE CONN. MUTUAL LIFE INS. CO. } At law. No. 16471.

1. And now comes the said defendant, and for plea says that it was never indebted as alleged.

2. For a second plea the defendant says that said plaintiff did not have an insurable interest in the life of Levi Dillenberg, as alleged in said declaration.

3. For a third plea the defendant say' that the said policy of insur-

7 ance was procured from said company by the plaintiff and Levi Dillenberg, through fraudulent concealment of important and material facts, and by means of false statements.

ENOCH TOTTEN,
Att'y for Defendant.

All of defense waived by Mr. Stanton.

Joinder and notice of issue.—Filed December 4th, 1876.

In the supreme court of the District of Columbia.

LEOPOLD LUCHS *vs.* THE CONN. MUTUAL LIFE INSURANCE CO. } At law. No. 16471.

The plaintiff joins issue upon the defendant's pleas.

STANTON & WORTHINGTON,
Atty's for Plaintiff.

SAME *vs.* SAME. } At law. No. 16471.

8 Take notice that the issue joined in this cause will be tried at the next special term of this court.

STANTON & WORTHINGTON,
Att'ys for Plaintiff.

To ENOCH TOTTEN, Esq.,
Att'y for Defendant.

Not'e of issue.—Filed December 4th, 1876.

In the supreme court of the District of Columbia.

LEOPOLD LUCHS
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Co. } At law. No. 16471.

Stanton & Worthington, att'ys for plaintiff.
Enoch Totten, attorney for defendant.
Last pleading filed December 4th, 1876.

9 *Additional pleas.—Filed December 18th*, 1879.

In the supreme court of the District of Columbia.

LEOPOLD LUCHS
vs.
THE CONN. MUTUAL LIFE INS. COMPANY. } At law. No. 16471.

And now comes the said defendant, by its attorney, and by leave of court for further pleas, says:

1. That said defendant never promised in manner or form as in the said declaration stated.

2. That the said policy was issued upon the faith and warranty of certain proposals, answers, and declarations of the said plaintiff, which entered into and formed a part of said policy, and that said answers, proposals, and declarations were in many respects untrue, and incorrectly stated, to wit: The plaintiff, in said declaration, disclosed that he had an insurable interest in the life of Levi Dillenberg to the full amount of ten thousand dollars, when in truth and in fact said declaration was incorrect and untrue;
10 and the said applicant in said declaration and said answers were asked how many brothers were dead and what was the cause of death, answered that one brother was dead, and that the cause of death was "accident," when in truth and in fact the cause of death of said brother was suicide by cutting his throat with a razor; and in said application the inquiry was made whether any grandparent, parent, brother, or sister, was ever afflicted with insanity or pulmonary disease, and the said plaintiff and the said Dillenberg, in and by said answer, answered "No" to both of said inquiries, when in truth and in fact said answers were false in this, that the brother of said assured, Levi Dillenberg, was insane, and while far gone in consumption and in a fit of insanity, cut his own throat with a razor.

3. That the said policy is null and void, because the said plaintiff and the said Levi Dillenberg and each of them, concealed and withheld from the said defendant information with which its directors should have been made acquainted.

ENOCH TOTTEN,
Att'y for Def't.

11 *Joinder in issue.—Filed December 18th, 1878.*

In the supreme court of the District of Columbia.

LUCHS
vs.
CONNECTICUT MUTUAL LIFE INS. CO. } At law. No. 16471.

The plaintiff joins issue upon the defendant's additional pleas filed the 18th day of December, 1878.

WORTHINGTON & HEALD.

Proceedings before the supreme court of the District of Columbia holding a special term and circuit court in and for said District, commencing on the fourth Monday, 27th day of January, 1879.

MONDAY, *January 27th*, 1879.

By order of Cartter, chief justice, one of the justices of said court presiding, the court is opened by proclamation of the marshal, pur-
12 suant to rule of court.

MONDAY, *March 10th*, 1879.

Session resumed pursuant to adjournment, Cartter, chief justice, presiding.

LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company, defendant. } At law. No. 16471. Cal. 166.

Now again come here as well the plaintiff, by his attorney, Mr. Jos. Worthington & Heald, as the defendant, by its attorney, Mr. Totten, and another jury of good and lawful men of this District, to wit, Joseph B. Wells, David L. Shoemaker, David Fisher, sr., George T. Bassett, Henry K. Wood, Charles H. Payne, Isac B. Lumsford, Joseph Ashford, Cornelius Clark, James H. Clark, John N. Gray, and James R. Norton, who being duly sworn to try the issue above joined, are respited until the meeting of the court to-morrow.

TUESDAY, *March 11th*, 1879.

Session resumed pursuant to adjournment, Cartter, chief justice, presiding.

13 LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Co., defendant. } At law. No. 16471. Cal. 166.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the meeting of the court to-morrow.

WEDNESDAY, *March* 12*th*, 1879.

Session resumed pursuant to adjournment, Cartter, chief justice, presiding.

LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT LIFE INSURANCE CO., DEFENDANT. } At law. No. 16471. Cal. 166.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after a further hearing of the case, are again respited until the meeting of the court to-morrow morning.

THURSDAY, *March* 15*th*, 1879.

14 Session resumed pursuant to adjournment, Cartter, chief justice, presiding.

LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT LIFE INSURANCE CO., DEFENDANT. } At law. No. 16471. Cal. 166.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury that was respited yesterday, who, after the case is given them in charge, on their oath say they find the issue in favor of the plaintiff, and that the money payable to him by the defendant by reason of the premises is five thousand dollars, with interest thereon from August 22ond, 1876, besides costs. Therefore it is considered that the plaintiff recover against said defendant five thousand dollars, with interest as aforesaid, being the money payable by it to the plaintiff by reason of the premises, and $70.30 for his costs of suit, and have execution thereof.

FRIDAY, *March* 14*th*, 1879.

Session resumed pursuant to adjournment, Cartter, chief justice, presiding.

15 LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE CO., defendant. } At law. No. 16471.

Now comes here the said defendant and moves the court to set aside the verdict and grant a new trial in this cause, because the said verdict is contrary to the evidence and against the instructions of the court.

SATURDAY, *April* 5*th*, 1879.

Session resumed pursuant to adjournment, Cartter, chief justice, presiding.

LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE CO., def't. } At law. No. 16471.

Upon argument of the defendant's motion for a new trial, it is considered that said motion be, and the same is hereby, overruled.

MONDAY, *May 5th*, 1879.

Session resumed pursuant to adjournment, Cartter, chief justice, presiding.

16 LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Co., def't. } At law. No. 16471.

Now again comes here the defendant, by its said attorney, and tenders to the court here its bills of exceptions to the rulings of the court on the trial of this case, and prays that they may be duly signed, sealed, and made a part of the record, now for then, which is done accordingly.

Motion for new trial.—Filed March 14th, 1879.

In the supreme court of the District of Columbia.

LEOPOLD LUCHS
vs.
CONN. MU. LIFE INS. CO. } At law. No. .

Now comes the said defendant and moves the court to set aside the verdict, and grant a new trial in this cause, because the said verdict is
17 contrary to the evidence and against the instructions of the court.

ENOCH TOTTEN,
Att'y for Defendant.

Motion for new trial on exceptions.—Filed May 6th, 1879.

In the supreme court of the District of Columbia.

LEOPOLD LUCHS
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Co. } At law. No. 16471.

And now comes the said defendant, by its counsel, and moves the court for a new trial on the exceptions.

ENOCH TOTTEN,
Att'y for Def't.

18 *Bill of exceptions.—Filed May 5th*, 1879.

In the supreme court of the District of Columbia.

LEOPOLD LUCHS
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company. } At law. No. 16471.

On the trial of this cause the plaintiff, to prove the issues joined on his

part, offered testimony tending to show that in October, 1866, the plaintiff was engaged in the tobacco business in the city of Washington, having his dwelling-house and store together, in a building on Eighth street, between E and F, in said city; and that afterwards, and on the 8th day of October, 1866, he entered into a copartnership arrangement to conduct the same kind of business with one Levi Dillenberg, now deceased, who was his wife's brother, under the firm name of Luchs and Company; and that the arrangement made between the said plaintiff and the said Dillenberg was that each should contribute his services and an equal portion of the capital of the said copartnership; and that
19 they should share the profits equally between them, and that it was understood at the time that the capital of the said Dillenberg was invested in mining stocks on the Pacific co'st, and that he could not immediately realize therefrom; that the said plaintiff contributed to the said partnership the sum of $161.24 in cash, and stock in trade of the value of $10,100.28, and that an account was opened upon the books of the said firm with the said plaintiff, and he was given credit in said account for the said sum of money and the value of said stock in trade; that the business of the said firm was carried on for about one year in the old store on Eighth street, and that at the expiration of that time another store was taken on Seventh street, near the corner of F, to which place the partnership property was removed, and the business of the said firm was thereafter continued in said store, and that said plaintiff's wife for him continued to keep and maintain his store, for the sale of tobacco, on Eighth street, as theretofore; that some time in the month of August, 1868, dissatisfaction existed between the said plaintiff and the said Dillen-
20 berg in consequence of the failure on the part of the said Dillenberg to contribute his share of the capital stock; that said Dillenberg never paid in his own half of said stock, nor any part thereof, and that thereupon one Charles F. Myers, who was a witness at the trial, was called in by *na*tural agreement between the parties to examine the books of the firm and ascertain the condition of the business at that time, and that thereupon he did, on the 10th of August, '68, take an account of stock and of their transactions, and that afterwards and on the 1st day of January, 1869, and on the 22ond day of September, '69, he was again called in to take an account of stock and make a statement of the accounts and of the business of the said firm; that thereupon, or soon afterwards, as a means of adjusting the dispute or misunderstanding between the said partners, the said Myers suggested to the said plaintiff and the said Dillenberg that a policy of insurance should be taken out upon the life of the said Levi Dillenberg for the use and benefit of the said plaintiff. The plaintiff being a witness in the cause, in his own behalf on this branch of the case testified as follows, to wit:

21 A. All I know about the policy is that Myers came in there and says he, "Mr. Luchs, do you know whether Mr. Dillenberg is well and healthy?" and says he, "Please put your name there; it is only a matter of form anyhow."

Q. And that was the first you knew about its being taken out?

A. Yes, sir; I did not read it.

Q. Was Levi there?

A. Yes, sir; Levi was there, and I just put my name there. That was all I knew about it at the time.

Q. Did you receive a policy some time after that?

A. Yes, sir; before Mr. Dillenberg left, he says, "There is an instrument for you, to show you that I mean to do what is right. You send me the bills and I will refund you the money for it.

(Submitting paper to witness.)

Q. Is that the paper?

A. That is it.

Q. Did you pay any premiums on this policy?

A. The first two Dillenberg paid himself. After he got insane I paid it.

22 * * * * * * *
* * * * * * *

Q. Now, come down to the time that that application was made for this policy. Tell us in the first place when it was that the suggestion was first made about taking out a policy.

A. That was more by way of conversation between me and Myers. It was a few weeks before we engaged Myers to assist us in fixing our books and taking up stock—about the 11th of August, 1868.

Q. It was about that time that the suggestion was made?

A. It was a few days before. It was in the way of conversation, not in the capacity of an agent or anything of that kind, that we happened to speak. My store is open from six in the morning to twelve at night, and frequently some one comes in and we talk; and Myers frequently did that, and we spoke about this matter, &c.; Dillenberg at that time had already engaged Myers to assist us in that work, and Myers was sitting there one evening and he spoke something like—I forget the exact words what he did say about insuring the capital in a manner like this; but I
23 did not make an answer to it and I did not think of it. I did not know what his object was at the time.

Q. When did you next hear anything about taking out a policy?

A. I never heard anything about a policy until we had settled off, and Mr. Dillenberg said to me, "Now, Mr. Luchs, to show you that I mean to do what is right and fair and square with you, there is an instrument. If I am away, no matter where I am, if a bill comes here to pay the premium on it, you pay it and let me know, and no matter where I am I will refund you the money."

And the before-mentioned CHARLES F. MYERS, a witness for the plaintiff on the trial, testified as follows as to taking out the said policy of insurance, to wit:

Q. Did Luchs know that this policy was being gotten out at that time—that Dillenberg was taking out this policy?

A. I had suggested it to him, but did not think that he had ever given it any thought, or accepted any conclusion, until about the time
24 the policy was delivered.

Q. When you were preparing these papers did he know what you were doing it for?

A. I cannot say particularly. I know what I had suggested to him.

Whether he knew that or not I do not know. I could not say particularly what he knew in regard to the matter, although I had told Mr. Luchs what was prepared to be done, and had one or two conversations in regard to it.

Q. How soon after the policy was received did you tell Luchs that Dillenberg had it, if you ever told him?

A. I do not know positively that I mentioned it to him at that time that Dillenberg had it. I remember taking papers in there for Mr. Luchs to sign, and having him sign them.

Q. To whom was that policy delivered?

A. The policy was delivered to Mr. Dillenberg."

Re-direct examination by Mr. WORTHINGTON:

Q. "You say that on the date of this application Luchs would have owed Dillenberg about $3,000, that is, supposing Dillenberg had put in one-half of the stock, or its equivalent?

25 "A. Of course, if Mr. Dillenberg had put in one-half of the capital.

"Q. Now, then, it is shown by these accounts that during these three years and a little over Levi Dillenberg drew three thousand and odd dollars, I understand you to say; his services would have been worth how much a year, $1,200?

"A. Well, I wouldn't know how to fix his services. I suppose a man could be hired at from 75 to a hundred dollars a month.

"Q. Well, say $1,200 a year.

"A. But he wouldn't have the same interest if he had been hired that he would if he had been a partner.

"Q. Suppose he had been hired to do this work, and not as a partner, then how much would he have become entitled to during these three years?

"A. I suppose a man could have been hired at 2,500 or 2,700 dollars.

"Q. If you take that from the $8,000, how much does it allow that he got?

"A. In the neighborhood of $4,500.

"Q. That $4,500 went out of that store, didn't it, into his pocket?

"A. Yes, sir.

"Q. What did Mr. Luchs get for it?

26 "A. He got the policy of insurance.

"Q. Did he get anything else?

"A. Nothing.

"Q. In this final account which was made on the first of September you get at the assets and then the liabilities, and then you call the balance profits?

"A. Yes, sir.

"Q. Now, you say in the first place, stock on hand as per inventory, $11,960.18. That is the amount of the inventory taken at that time, was it?

"A. Of merchandise.

"Q. Merchandise on hand?

"A. Yes.

"Q. Then you say: Cash in bank, $1,200; outstanding accounts due

the firm $1,011.31; Levi Dillenberg owes the firm $4,500.89; L. Luchs owes the firm $1,164.06, that being over and above the $10,000 of stock?

"A. Yes, sir.

"Q. The total you make is $19,836.44. You deduct from that the liabilities of the firm, $3,253.84, and the rest you call the profits. Then you have got in there as part of the profits in that store the entire amount of stock in trade at the time they separated?

"A. Yes, sir.

27 "Q. Mr. Dillenberg owns half of the entire stock in trade?

"A. Yes, sir.

"Q. That $16,582,60 is called profits, and that is made up in part of the $1,200 of stock?

"A. That is made up of everything.

"Q. Then you give him half of the stock in trade?

"A. Yes, half of everything there is.

"Q. As well as half of the cash in bank, half of the outstanding amounts due the firm, and half of what Luchs owes the firm, and half of what Dillenberg himself owes the firm?

"A. Half of everything.

"Q. So that he is really charged only $4,500 against himself?

"A. Yes, sir.

"Then you say: Amount due L. Dillenberg to date $8,291.30, as per above statement; that means you gave him half of the $16,582.60, and you gave him half of the stock in trade, when they separated?

"A. I gave him half of everything."

28 That afterwards, and on the 4th day of May, 1869, a declaration and application for an insurance on the life of Levi Dillenberg were signed by the said Levi Dillenberg and the said Leopold Luchs. That this declaration and application were forwarded to the defendant at Hartford, Connecticut, and afterwards, and pending the consideration of the application, a letter bearing date May 21st, 1869, written by the said Charles F. Myers, was forwarded to, and received by the said insurance company. That the said Charles F. Myers was at the time of the making of the said declaration and application, and for a long time theretofore had been, an agent and solicitor of life insurance in the city of Washington, and that he was paid by the said firm for his services rendered in and about the statements of their accounts and the taking of inventories of their stock of goods, at the rate of $25.00 for each statement of account. That policy of insurance was thereafter, and on the second day of June, 1869, issued by the said defendant upon the life of said Levi Dillenberg. The plaintiff thereupon offered in evidence the said policy of insurance together with

29 the said declaration and application for insurance, to the introduction of which testimony the defendant by its counsel then and there objected, but the objection was overruled and the policy of insurance and the said declaration and application were read in evidence to the jury, notwithstanding said objection, to which ruling of the court the defendant by its counsel then and there duly excepted. The said declaration and application are in the words and figures following, to wit:

Declaration.

THE CONNECTICUT LIFE INSURANCE COMPANY OF HARTFORD, CONN.

I, Leopold Luchs, of Washington, District of Columbia, being desirous of effecting an assurance with the Connecticut Mutual Life Insurance Co. in the sum of ten thousand dollars, upon the life of Levi Dillen-
30 berg, of Washington, county of Wash., and Dist. of Columbia, during the whole term of life, do hereby declare that his age next birthday will be thirty-two (32) years; that he is now in good health, of sober and temperate habits, and does usually enjoy good health; and that the following answers and statements are correct and true, in which I have not concealed, withheld, or misrepresented any material circumstance in relation to the past or present state of his health, habits of life, or condition, which may render an assurance on his life more than usually hazardous, or with which the directors of said company ought to be made acquainted.

And I do hereby declare that I have an interest in the life of the said Levi Dillenberg to the full amount of the said sum of ten thousand dollars.

And I do hereby agree that the answers given to the following questions, and the accompanying statements, and this declaration shall be the basis and form a part of the contract or policy between me and the said company; and that if the same be not in all respects true and correctly stated, the said policy shall be void, and all moneys which may
31 have been paid on account thereof, and all dividend credits which may accrue therefrom shall be forfeited to said company; and I further agree, that the assurance hereby proposed shall not be binding on said company, and no policy shall attach until the amount of premium as stated therein shall be paid to said company in the life-time of said assured.

Dated at Wash., D. C., this 4th day of May, 1869.

LEOPOLD LUCHS.
LEVI DILLENBERG.

Witness: C. F. MYERS.

Questions and answers above referred to.

1. Name and residence of the person for whose benefit the assurance is proposed. ☞ Give christian names in full and plainly written. If wife or husband, so state.	Leopold Luchs, Washington, D. C.
2. Name and residence of
32 the person whose life is proposed to be insured.
☞ See note as above. If wife or husband, father, mother, brother, or sister of applicant, so state.	Levi Dillenberg, Washington, D. C.
3. Occupation of person whose life is proposed to be insured; and whether married or single.	Merchant.
4. Place and date of birth of the party whose life is to be insured, giving months and days.	Germany, near Frankfort, April 7th, 1837.

5. Age next birthday.	32 (thirty-two) years.
6. Is the party now and has he always been of temperate habits?	Yes.
7. Has the party resided out of the United States; and if so, where, for what purpose and period, and what was the effect of such residence on his health?	Born in Germany; came to U. S. before reaching the age of 14 years.
8. Has the party been vaccinated or had the small pox?	Yes; never.
9. Grand-parents living, 33 ages, health. Parents living, ages, health. Brothers living, 1; ages, 48; health good. Sisters living, 3; ages, ; health all good.	Grand-parents dead, 4; ages, don't know; cause of death, old age; parents dead, 2; ages, don't know; cause of death, father died of old age, mother of tumor. Brothers dead, ; age, ; cause of death, ; sisters dead, 1; ages, 5; cause of death, fever.
10. Has grand-parent, parent, brother or sister ever been afflicted with insanity, or with pulmonary, scrofulous, cancerous, or any other hereditary disease?	No.
11. Has the party ever had any of the following diseases, viz: Apoplexy, gout, asthma, insanity, bronchitis, liver complaint, consumption, paralysis, cholic, palpitation, dyphtheria, quinsy, dyspepsia, rheumatism, dysentary, rupture, disease of the heart, scarlet fever, 34 fits, spitting of blood, fistula, disease of urinary organs, dropsy, disease of the uterine organs; if so, state cause, character, frequency, and duration of the disease, and whether a perfect recovery.	Have slight attacks of dyspepsia. (See letters of Dillenberg, with certificate of Dr. Bulkly, sent with former application.)
12. Has the party been afflicted during the past seven years with any severe or acute constitutional disease, and what?	No.
13. Is the party now afflicted with any disease or disorder, and what?	None.
14. Has the party ever met with any accidental or serious personal injury; if so, what was it?	None.
15. Name and residence of the partie's usual medical attendant, or (if he have none) of some other medical person to be referred to for information as to his health.	Dr. Magruder.

16. Name and residence of an intimate friend to be referred to for similar information.	L. Luchs.
17. Amount of insurance applied for $10,000.	Ten thousand dollars.
18. Term for which the insurance is desired, and specific plan.	Whole term of life (Table 1.)
19. Has a previous proposal been made for insurance in this or any other company; and if so, was it accepted or not; and if accepted, for what amount?	In this company, for $5,000, and accepted. Has been insured in Travelers' Life & Accident.
20. Is the party aware that any untrue or fraudulent allegation, made in effecting the proposed assurance, will render the policy void, and that all payments of premiums made thereon, and dividend credits accruing therefrom will be forfeited.	Yes.

LEVI DILLENBERG.
L. LUCHS.

Witness: C. F. MYERS.

[VIGNETTE.] CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, HARTFORD, 1866.

Examination of Mr. LEVI DILLENBERG, 4th day of May, 1869.

1. Height, figure, weight, temperament, general appearance, and habits of life?	Height, 5 ft. 10 inches; fig. erect; weight, 155; temp., sanguine; gen. app., healthy; habits of life correct.
2. Whether any residence in southern, tropical, or other foreign climates; and, if so, what effect, if any, was produced on the constitution and health? NOTE.—If applicant has been in the Army, state its effect on his habits; also, his occupation before and since his connection with the Army.	Native of Germany; health good. Came to this country when 14 years of age.
3. Any affection, functional or organic, of the head, or of any part of *of* the nervous system? Has there been any apparent predisposition to disease of brain or spinal cord, as indicated by conformation, family history, occupation, or habits?	No. No.
4. 1. Is respiration full, easy, gentle, and regular? 2. How many inspirations per minute? 3. Is the	1. Yes. 2. 20. 3. Yes.

inspiratory murmer full and healthy, and to be heard alike over both lungs? State any departure from a healthy condition, if it exist.	
5. Is the party subject to cough, catarrh, a vitiated expectoration, or difficulty of breathing? If so, what is the cause?	No.
6. 1. Rate, strength, and volume of the pulse? Is the heart's action uniform, free, and unobstructed? Are its sounds and impulses healthy? If not, describe (particularly) any departure from a normal condition.	1.80; full & strong. 2. Yes. 3. Yes.
38 7. Are either the stomach, liver, spleen, kidneys, intestinal canal, or urinary organs now diseased, or have they been?	Now in perfect health; has been troubled with dyspepsia slightly at times.
NOTE.—If applicant be a female, state present condition of uterine functions; and if married, the number and character of her labors.	See letter of explanation forwarded at date of former application.
8. Has the party ever suffered from serious mechanical injury; if so, when, and what is his present condition? From severe or acute constitutional disease; if so, what?	No. No.
9. State the ages and health of parents, if living; if dead, their ages, and the diseases of which they died.	Father died at age of 66. Don't know cause of death. Mother died at age of 48; don't know cause of death.
10. Any predisposition, either hereditary or acquired, to constitutional disease? If so, state particularly what.	Not that I am aware of. Candidate is not aware of being predisposed to any constitutional disease.
39 11. Do you consider the party's life safely insurable? Do you advise that a policy be issued?	I do, and recommend that policy be granted.
(Signed)	H. A. ROBBINS, *M. D.*, *Examining Physician.*
Where graduated?	University of Pennsylvania.
When graduated?	March 14th, 1861.

(On margin:) ☞For an intelligent decision as to the insurability or otherwise of applicants the directors depend much upon the certificate of their medical examiners. They therefore expect that their answer to each question will be full, explicit, and, so far as possible, exact, and no certificate failing to conform substantially to this requirement will be accepted. Please read circular, and write legibly and with black ink.

And the said policy of insurance, together with the endorsements thereon, are in the words and figures following, to wit:

40 CONNECTICUT MUTUAL LIFE INSURANCE CO. OF HARTFORD, CONN.

No. of policy, 95299. Amount insured, $5,000. Premium, 125.00. Payments annual.

[50c. 50c.]

This policy of insurance witnesseth, that the Connecticut Mutual Life Insurance Company, in consideration of the declarations and representations made to them in the application for this insurance, and the sum of one hundred and twenty-five dollars and cents, to them in hand paid by Leopold Luchs, of Washington, D. C., and of the annual premium of one hundred and twenty-five dollars and cents, to be paid on or before the second day of June in every year during the continuance of this policy, do assure the life of Levi Dillenberg, of Washington, in the county of Washington, District of Columbia, in the amount of five thousand dollars, for the term of the whole continuance of his life.

And the said company do hereby promise and agree to and with the said assured, his executors, administrators, and assigns, well and
41 truly to pay, or cause to be paid, in the city of Hartford, the said sum insured to the said assured, his executors, administrators, or assigns, within ninety days after due notice and proof of the death of the said Levi Dillenberg, deducting therefrom all indebtedness of the party for loans made by the company on this policy.

And it is hereby conditioned and agreed, that if at any time after three premiums have been paid on this policy, it shall be surrendered while yet in force, the company will issue a paid-up non-forfeiture policy therefor, for such an amount as the then present value of this policy would purchase as a single premium.

Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the assured upon these expressed conditions, that in case the said person whose life is hereby insured shall pass beyond the settled limits or the protection of the Government of the United States (excepting into the settled limits of the Dominion of Canada), or shall between the 15th day of June and the 1st day of November, visit those parts of the United States situated south of
42 the southern lines of North Carolina and Tennessee; or shall enter upon a voyage upon the high seas; or shall be personally engaged in blasting, mining, submarine operations, or the manufacture or transportation of highly inflammable or explosive substances; or engaged as an engineer or fireman in charge of a steam-engine, or as engineer, fireman or brakesman on a railroad, or as a marine officer, or employee in any capacity, on sea service on any sea, sound, inlet, river or lake; or enter into naval or military service whatever, either voluntary or otherwise (excepting into the militia, when not in actual service), without the consent of this company in each and either of the foregoing cases, previously given in writing; or if he shall die by his own hand, or in consequence of a duel, or by the hands of justice, or the violation of any law of the State

or the United States, or of any government where he may be; then and in every such case this policy shall be null and void and of no effect.

And it is also understood and agreed to be the intent and meaning hereof, that if the proposal, answers, and declaration made by the said
43 Leopold Luchs, and bearing date the fourth day of May, 1869, and which are hereby made part and parcel of this policy, as fully as if herein recited, and upon the faith and warranty of which this agreement is made, shall be found in any respect untrue, then and in such case this policy shall be null and void; or in case the said assured shall not pay the said annual premiums on or before the several days hereinbefore mentioned, for the payment thereof, then and in every such case the said company shall not be liable to the payment of the sum insured, or any part thereof, and this policy shall cease and determine.

And it is further understood and agreed that this policy shall not take effect and become binding on said company until the premium above named shall be actually paid to said company, or to some person authorized by them to receive it, during the life of the insured.

And it is further agreed that, in every case where this policy shall cease or become or be null or void, all previous payments made thereon, and all dividend credits accruing therefrom, shall be forfeited to the said company.

44 In witness whereof the said Connecticut Mutual Life Insurance Company have, by their president and secretary, signed and delivered this contract in the city of Hartford, this second day of June, one thousand eight hundred and sixty-nine; but the same shall not be binding until countersigned by Lincoln & Willard, agents at Washington, D. C.

L. PRESTON,
V. President.
W. S. OLMSTEAD,
Secretary.

Countersigned at Washington, D. C., this third day of July, 1869.
LINCOLN & WILLARD, *Agents.*

(The following is the endorsement on the foregoing policy:)

Notice to policy-holders.

CONDITIONS UPON WHICH THE CONTINUANCE OF THIS POLICY DEPENDS.

This policy, presupposing the payment of the first premiums at
45 date of its issue, acknowledges the payment, but the liabilities of the company does not attach or commence until the first premium is fully paid, and during the life-time of the insured (without regard to the date of the policy), and continues until the day named in the policy for payment of the next premium, at 12 o'clock noon, and no longer. All subsequent premiums are due on the several days stipulated in the policy, and unless they are paid when due all risks to the company cease, and the policy is void; and no premium will be received by the company continuing such risk after the day named in the policy for the payment of such premium, unless the insured is in perfect health. Acceptance of the premiums past due for reviving a policy must be considered acts of grace and

courtesy by the company, and in nowise are to be construed as forming a precedent for future payments nor a waiver of forfeiture of the policy according to the conditions therein expressed if any future payment of premiums be omitted on the day it falls due. The only evidence of payment of such premium acknowledged by the company as valid and
46 binding is the printed renewal receipt of the company, signed by the president or secretary. Payments of premiums may be made to an agent, but only on his delivery of a receipt signed by the president or secretary. When receipts are delivered by an agent, such agent should countersign the same, as an evidence of payment to him.

Agents are not authorized to receive any premium on the part of the company unless they shall have a receipt therefor, signed by the president or secretary, to deliver to the policy-holder, and no payment made to an agent without such receipt being given in return by him will be acknowledged valid by the company.

Agents are not authorized to make, alter, or discharge contracts, waive forfeiture of payments of premiums, name an extra rate for special risks, or bind the company in any way; their duties being simply the reception and transmissions of applications for policies, and deliver the same when issued under the rules and instructions of the company, and collecting the premiums therefor. In writing the application and transmitting it to the company they act as the agents of the applicant only.

47 Agents are not, under any circumstances, authorized to write the receipts for premiums, or make any endorsements whatever on the policy.

Permits are required for travel or residence beyond the limits prescribed in the policy, or to engage in any hazardous occupation. Extra rates in such cases are always charged as a percentage on the amount insured, and not on the amount of premium. When a policy is changed at the request of the assured the revenue stamp and a policy fee are to be paid by the assured.

Thereupon the defendant's counsel, on cross-examination of the witness Myers, called out and read in evidence from the books of account of the said firm of Luchs and Company the personal accounts with said firm of the plaintiff Leopold Luchs and the said Levi Dillenberg, in the words and figures following, to wit:

48 L. LUCHS. [Liber 2.

1866.	Dr.			1866.	Cr.		
October 10	To cash	5	260 75	Oct. 8	By cash	4	1,011 24
" 11	" "	"	25 00	" "	" "	4	150 00
" "	" "	"	118 56	" "	" mdse. per invoice.	8	10,100 28
" "	" "	"	200 00	" 24	" cash	6	1 97
" 15	" "	"	2 00	" 26	" "	"	5 00
" "	" "	"	37 50	" 27	" "	"	28 00
" "	" "	"	5 00	" 30	" "	"	4 00
19	" "	7	73 50	" "	" "	"	33 54
"	" "	"	2 74	" 31	" "	"	15 00
20	" "	"	2 00	" "	" "	"	70 00
"	" "	"	2 50	Nov. 24	" mdse	24	123 08
23	" "	"	60 60	1	" cash	8	20 50
"	" "	"	2 50	"	" do.	"	52 00
"	" "	"	5 00	"	" do.	"	509 45
24	" "	"	143 00	2	" do.	"	173 25
"	" "	"	1 80	3	" do.	"	146 99
27	" "	"	50	5	" do.	"	25 00
"	" "	"	100 00	6	" do.	"	16 95
"	" "	"	2 50	8	" do.	"	50 00
"	" "	"	80 25	"	" do	"	20 00
29	" "	"	4 00	9	" do.	"	15 00
30	" "	"	482 30	10	" "	10	23 87
Nov. 20	" mdse	24	705 43	13	" "	"	48 12
19	" "	"	22 87	19	" "	12	8 22
24	" "	"	11 17	20	" "	"	14 39
1	" cash	9	450 00	29	" mdse	26	27 32
"	" "	"	15 20	23	" cash	14	50 00
"	" "	"	4 89	"	" cash	"	89 00
5	" "	"	30	26	" cash	"	40 00
"	" "	"	1 75	30	" cash	"	44 97
6	" "	"	1 50				
8	" "	"	300 00				
"	" "	"	70 00				
9	" "	11	20 00				
10		"	5 00				
			$3,220 05				$12,916 14
	Amount brought forward to page 41.						

49 L. LUCHS. [Liber 2, 41.

1866.	Dr.				Cr.		
Nov.	Am't brought over	2	3,220 05		Am't brought over	3	$12,916 14
12	" cash	11	35	Dec. 1	By cash per M	16	40 00
13	" "	"	6 00	3	" cash	-----	100 00
16	" "	12	50	4	" cash	-----	45 00
17	" "	13	5 00	"	" cash	-----	9 00
19	" "	"	57 85	5	" cash	-----	25 00
"	" "	"	11 26	"	" cash	-----	45 00
"	" "	"	10 40	"	" cash	-----	15 00
20	" "	"	2 00	6	" cash	-----	31 30
"	" "	"	1 00	8	" cash	-----	25 00
21	" "	11	50 40	11	" cash	-----	60 60
28	" mdse	27	2 66	13	" cash	18	9 00
24	" "	28	19 88	"	" cash	-----	156 95
28	" "	29	19 75	15	" cash	-----	10 00
23	" cash	15	100 00	17	" cash	-----	3 80
"	" cash	"	4 00	19	" cash	20	30 00
26	" cash	"	5 00	20	" cash	-----	25 00
"	" cash	"	30 00		" cash	-----	33 00
Dec. 3	" cash	17	5 00	25	" cash	-----	30 00
"	" cash	-----	700 00	26	" cash	-----	20 00
5	" cash	-----	4 50	28	" cash	-----	127 45
11	" cash	-----	291 25	6	" mdse	40	3 67
"	" cash	19	6 58	31	" deduction	43	50
12	" cash	"	54 00				
13	" cash	-----	10 00				
15	" cash	-----	4 74				
20	" cash	21	15 00				
29	" cash	-----	5 00				
Dec. 13	" mdse	31	138 02				
19	" mdse	32	59 35				
20	" mdse	36	13 74				
22	" mdse	40	4 56				
31	" mdse	43	27 30				
	By am't due		$8,875 67				
			$13,760 81				$13,760 81
	Carried to folio 45.			1867.	By amount due	-----	8,875 67

50 L. LUCHS. [Liber 2, 45.

1867.		Dr.			1867.		Cr.		
Jan.	4	To cash	25	365 66	Jan.		Am't brought over from page	41	$8, 875 67
		" cash	"	4 97		2	By cash	24	1 20
	10	" cash		55 00		3	" cash		35 00
	12	" cash		54 00		4	" cash		4 00
	22	" cash	27	30 50		5	" cash		11 30
	25	" cash	29	2 00			" cash		40 00
	26	" mdse	53	27 90		7	" cash		25 00
	"	" mdse	54	11 35		9	" cash		15 00
	27	" mdse		3 62		14	" cash	26	25 00
Feb.	1	" cash	31	11 00		15	" cash	"	10 00
	11	" cash	"	50		21	" cash		15 00
	26	" cash	33	8 00		23	" cash		15 00
	27	" "	35	2 00		19	" cash	28	10 00
	"	" "	"	1 25		30	" cash	"	21 87
	27	" mdse	58	169 04		"	" cash	"	10 91
March	1	" cash	37	104 22		2	" 1 ton coal	45	9 00
	8	" "	"	1 20		5	" am't due from Jacob Phillips	48	34 74
	"	" "	"	3 19		18	By 1 ton coal	53	9 00
	13	" "	"	3 00	Feb.	1	" cash	30	25 00
	2	" mdse	63	32 60		4	" "	"	31 00
	13	" "	64	51 13		11	" "	"	30 00
"	26	" "	70	67 78		19	" "	32	23 00
	29	" "	71	3 93		25	" "	"	5 60
		" "	"			"	" "	"	25 00
						28	" "	34	5 50
						22	" mdse	59	3 62
					Mar.	5	" cash	36	85 00
						"	" "	"	25 56
						6	" "	"	36 57
						11	" "	"	10 00
						15	" "	38	50 00
						12	" mdse	65	38 68
				$1, 013 84					$9, 562 22
		Am't forwarded to page 55.							

51 L. LUCHS. [Liber 2, 55.

1867.		Dr.			1867.		Cr.		
March		Am't brought over	45	1, 013 84	March	18	Am't brought over	45	9, 562 22
	25	To cash	39	93 38		19	By mdse	71	21 25
	30	" "	41	2 50		"	" cash	38	4 50
Jan.	16	" "	27	10 00		21	" "	"	25 00
April	4	" "	43	10 00		26	" "	"	35 00
	"	" "	"	1 15		"	" "	"	127 17
	5	" "	"	18 00		27	" "	"	16 91
	6	" "	"	2 00	April	1	" "	42	10 00
	9	" "	"	10 00		2	" "	"	40 00
	11	" "	"	3 00		3	" "	"	56
	13	" "	45	15 25		13	" "	44	17 00
	17	" "	"	1 50		15	" "	"	2 30
	18	" "	"	3 00		15	" "	"	11 25
	3	" "	"	3 10		17	" "	"	10 00
March	30	" mdse	75	12 01		22	" "	"	8 40
April	1	" "	76	28 50	May	6	" "	48	28 01
	20	" "	77	71 98	"	10	" mdse	87	3 35
	26	" "	81	29 00	"	28	" "	91	58
	23	" "	82	6 02	June	1	" cash	54	43 98
	26	" cash	45	2 00		3	" "	"	10 00
	30	" "	47	1 00		4	" "	"	7 45
May	7	" "	49	10 00		11	" "	"	32 32
	8	" "	"	20 00	"	10	" mdse	97	17 52
	13	" "	51	40	"	25	" cash	56	35 00
	22	" "	"	37 50	"	24	" cash	"	129 37
	"	" "	"	10 00					
	17	" mdse	88	18 16					
	28	" "	89	35 64					
	"	" "	90	8 34					
June	5	" "	96	17 92					
	21	" "	"	17 51					
"	24	" "	100	2 85					
	25	" "	101	13 10					
June	1	" cash	55	1 10					
	13	" do.	57	1 00					
		To am't to folio 69		$1, 535 75			By am't to folio 69		$10, 199 14

52 L. LUCHS. [Liber 2. 69.

1867.		Dr.			1867.		Cr.		
		Amount brought over from page.....	55	$1,535 75			Am't brought over from page.....	55	$10,199 14
June	14	To cash.....	57	20	July	20	By mdse.....	110	7 72
"	"	" do.	"	1 25	"	3	" cash.....	60	18 00
	26	" do.	"	2 00	"	4	" "	"	15 00
	28	" mdse.....	102	6 00	"	6	" "	"	35 00
July	2	" mdse.....	104	20 15	"	11	" "	"	30 00
	29	" "	113	99	"	14	" "	62	20 00
	8	" "	107	90 64		17	" "	"	35 00
	24	" "	108	77 41	Aug.	27	" mdse.....	120	4 12
June	28	" "	59	106 10		24	" do.	122	2 50
July	2	" cash.....	61	40 00	Sept.	7	" cash.....	72	600 00
"	6	" do.	63	16 00	"	9	" mdse.....	128	83
"	20	" do.	"	20 00	"	24	" cash C. B.....	76	13 12
	24	" do.	65	50 25		...	" errors	131	60 51
	27	" do.	"	1 00	1866.				
Aug.	24	" mdse	122	5 15	Dec.	31	" by cash.....	20	5 60
Sept.	9	" cash.....	73	600 00	"	"	" " "	22	37 00
"	14	" " C. B	75	10 00	1867.				
"	21	" " for S.....	"	5 00	Mar.	1	By cash.....	36	50 00
	....	" errors	131	30 13	May	13	" cash.....	50	13 50
Oct.	2	" cash.....	77	6 00					
"	10	" mdse	147	5 49					
Jany.	14	" cash.....	27	4 00					
Oct.	14	" " C. Raeber..	79	50 00					
"	18	" "	81	4 00					
"	19	Balance.....		8,459 53					
				11,147 04					11,147 04

53 Page 2.] L. LUCHS. [Book 3.

1867.									
Nov.	1	To cash.....	11	15 20	Oct.	19	By stock	2	8,459 53
"	4	" "	13	60 25	"	22	" cash.....	3	330 00
"	4	" "	14	500 00	Nov.	4	" "	13	50 00
"	5	" "	14	50 00	"	5	" "	14	33 00
"	9	" "	17	1,716 67	"	5	" mdse	14	34 00
"	11	" "	18	61 00	"	7	" cash.....	15	150 00
"	14	" "	20	37 50	"	8	" "	17	250 00
"	19	" "	25	60	"	13	" "	20	15 25
"	27	" "	29	10 00	"	19	" "	24	350 00
Dec.	2	" mdse	32	65 00	"	25	" "	28	50 00
"	3	" cash.....	33	1 00	"	27	" "	29	1 80
"	9	" "	38	1 80	Dec.	2	" Dillenberg-.....	32	65 00
"	19	" mdse	40	29 79	"	9	" cash.....	38	30 00
"	12	" "	41	12 60	"	14	" mdse	43	2 55
"	18	" cash.....	44	8 50	"	16	" cash.....	43	60 00
"	19	" mdse	46	2 55					
"	20	" cash	47	15 21					
"	20	" mdse	47	14 53					
"	24	" cash.....	50	128 85					
		By balance.....		7,150 08					
				9,881 13					9,881 13
Jan'y	7	To mdse	62	40 00	1868.		By balance.....		7,150 08
"	17	" "	68	30 00	Jan'y	6	" cash.....	61	40 00
Feb'y	12	" cash.....	81	2 00	"	17	" "	68	30 00
March	17	" "	102	104 22					
April	1	" "	109	8 90					
"	3	" "	111	3 61					
"	10	" "	117	1 00					
"	22	" "	125	1 25					
"	24	" "	126	9 00					
"	30	" "	131	50					
May	27	" "	150	10 00					
"	28	" "	150	61 00					
June	16	" "	162	2 00					
"	16	" "	162	5 00					
		Balance.....		6,941 60					
				$7,220 08					7,220 08

54 Page 3.] L. LUCHS. [Book 3.

		Dr.				Cr.		
		Amount brought forward, F.	2			Amt. brought forward, F.	2	6,941 60
June	22	To cash	165	25 00	June 24	By cash	24	25 00
July	1	" "	173	65 00	July 18	" "	181	71 00
"	6	" "	175	2 00				
"	10	" "	175	1 50				
"	10	" "	178	7 00				
"	10	" "	178	5 00				
Aug.	4	" "	178	100 00				
"	10	" "	194	215 50				
"	"	" "	198	35				
"	"	" "	199	11 50				
		" balance		6,604 75				
				7,037 60				7,037 60
					1868.			
					Aug. 10	By balance		6,604 75

55 Page 67.] L. LUCHS. [Book 4.

		Dr.				Cr.		
1868.					1868.			
Aug.	22	To cash	10	125 00	Aug. 11	By balance		6,604 75
Sept.	5	" mdse	23	2 00	" 22	" cash	10	401 25
"	9	" "	25	11 84	Sept. 12	" "	28	11 84
"	11	" cash	27	1 00	Octo. 14	" "	58	2 00
"	"	" "	"	500 00	" 23	" "	63	385 00
"	21	" "	35	2 00				
Sept.	24	" "	38	277 00				
"	29	" "	44	1,000 00				
Oct.	8	" mdse	53	2 00				
"	"	" cash	54	1 00				
"	9	" "	"	1 00				
"	13	" "	57	3 90				
"	14	" "	58	4 00				
"	16	" "	59	5 00				
"	23	" "	63	1 50				
"	30	" "	70	1,200 00				
"	"	" "	"	54 50				
Nov.	7	" "	75	11 40				
"	6	" "	76	350 00				
"	9	" mdse	"	4 50				
"	13	" cash	80	10 00				
"	19	" "	83	10 00				
"	23	" "	86	7 00				
"	27	" "	90	1,200 00				
Dec.	8	" "	98	1 20				
"	"	" "	99	12 50				
"	16	" "	101	135 20				
"	"	" "	"	3 85				
"	21	" "	104	40 00				
"	22	" "	"	40 00				
"	28	" "	109	10 00				
Jan'y	1	" balance		2,377 45				
				7,404 84				7,404 84
1869.					1869.			
Jan'y	7	To cash	116	40 00	Jan'y 1	By balance per stock acc't		2,377 45
"	9	" "	"	108 00				
"		" "	160	2,229 45				
				$2,377 45				$2,377 45

56 Page 160.] L. LUCHS. [Book 4.

		Dr.			1869.		Cr.		
Jan'y	20	To cash	124	50 00			By balance	67	2,229 45
"	21	" "	126	650 00	Jan'y	14	" cash	120	40 00
"	29	" "	132	1 00	"	19	" "	124	65 00
Feb.	1	" "	134	50 00	Feb.	15	" "	143	50 00
"	2	" "	136	50	March	"	" "	167	35 00
"	18	" "	145	11 75	"	18	" "	170	42 68
"	20	" "	147	35	"	22	" "	173	35 00
"	"	" "	148	15 00	Apl.	1	" "	179	75 00
"	25	" "	151	1 35	"	30	" "	199	75 00
March	5	" "	158	450 00	May	11	" "	207	75 00
"	10	" "	162	120 00	June	21	" " D	237	217 00
"	13	" "	165	2 75	"	"	" "	"	18 00
"	17	" "	168	575 36	"	7	" "	227	60 00
"	"	" "	169	75 00			Balance		670 38
"	18	" "	"	1 50					
"	"	" "	170	68 75					
"	19	" "	170	2 00					
"	"	" "	171	1 00					
"	20	" "	"	300 00					
"	22	" "	172	50 00					
"	25	" "	175	65 00					
April	6	" "	183	13 75					
"	12	" "	187	7 00					
"	21	" "	192	75 00					
"	23	" "	194	540 00					
May	5	" "	202	75 00					
"	8	" "	205	15 00					
"	10	" "	206	115 00					
"	19	" "	213	60 00					
"	24	" "	217	80 45					
"	25	" "	218	25 00					
"	28	" "	220	5 00					
June	2	" "	223	60 00					
"	9	" "	228	60 00					
"	21	" " D	237	5 00					
"	22	" "	238	60 00					
				3,687 51					3,687 51
		" balance	208	670 38					

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		Dr.					Cr.		
July	3	To cach	247	60 00	Aug.	21	By cash	282	81 00
"	8	" "	249	350 00	"	"	" "	"	5 50
"	15	" "	254	60 00	"	30	" "	287	7 00
"	19	" "	257	10 00					
"	20	" "	258	25 00			" balance		1,164 06
"	29	" "	264	3 00					
Aug.	11	" "	273	28 00					
"	14	" "	276	5 00					
"	21	" "	281	28 00					
"	"	" "	"	1 15					
"	"	" "	282	5 30					
"	23	" "	283	43					
		" balance	160	678 38					
Sept.	2	" cash	289	6 00					
"	"	" "	"	1 80					
"	4	" m'd'se	292	3 50					
				$1,257 56					1,257 56
Sept.	7	To balance		1,164 06					

58 L. DILLENBERG. [Liber 2, 31.

1866.	Dr.			Cr.		
October 9	To cash	5	1 00	Am't due		$82 20
"	" "	"	25			
15	" "	"	1 50			
20	" "	7	1 75			
22	" "	"	50			
26	" "	"	50			
27	" "	"	2 00			
Nov. 1	" "	9	50			
3	" "	"	60			
8	" "	"	20 00			
9	" "	11	50			
14	" "	"	16 10			
16	" "	13	2 10			
17	" "	"	14 00			
19	" "	"	2 00			
21	" "		1 50			
21	" "		1 75			
Dec. 3	" cash	17	1 50			
7	" cash		8 00			
15	" cash	19	50			
20	" cash	21	3 65			
22	" cash	21	2 00			
			$82 20			82 20
1867.	Am't due		82 20	1867.		
Jan'y 2	Cash	25	70			
4	Cash		3 00			
7	Cash		8 60			
8	Cash		20 00			
9	Cash		1 00			
15	Cash	27	1 20			
17	Cash		29 87			
"	Cash		1 00			
18	Cash		18 13			
21	Cash		3 50			
	Cash		85			
23	Cash		3 75			
			173 80			173 80

59 46.] L. DILLENBERG.

1867.	Dr.			1867.	Cr.		
	Am't brought over from page	31	$173 80				
Jan. 24	To cash	27	11 00	May 27	By am't to folio	68	$293 30
27	" cash	29	2 10				
26	" cash	"	1 25				
Feb. 2	" "	31	25				
4	" "	"	1 25				
6	" "	"	1 50				
9	" "	"	50				
11	" "	"	1 00				
22	" "	33	1 00				
25	" "	"	6 00				
28	" m'd'se	63	6 00				
March 1	" cash	37	1 25				
11	" "	"	1 00				
13	" "	"	10 00				
18	" "	39	2 00				
26	" "	"	1 00				
27	" "	"	5 75				
30	" "	41	1 50				
April 1	" "	43	1 25				
8	" "	"	1 25				
11	" "	"	1 00				
15	" "	45	10 75				
22	" "	"	90				
29	" "	47	2 75				
May 1	" "	49	1 75				
6	" "	"	50				
8	" "	"	1 00				
10	" "	"	1 00				
13	" "	51	25 85				
18	" "	"	1 20				
	" "	"	14 00				
25	" "	"	1 50				
27	" "	"	45				
			$293 30				$293 30

60 68] L. DILLENBERG.

1867.		Dr.			1867.		Cr.		
May	27	To am't from	46	$293 30					
June	3	cash	55	50					
	7	Do.	"	300 00	Oct.	8	By am't to folio	88	$1,050 90
	8	Do.	"	7 20					
	13	Do.	57	4 50					
	14	Do.	"	1 05					
	17	Do.	"	50					
	21	Do.	"	50					
	24	Do.	"	50					
	28	Do.	59	1 00					
July	1	Do.	67	1 50					
	3	Do.	"	1 25					
	8	Do.	"	50					
	14	Do.	63	50					
July	22	Do.	65	1 00					
	25	Do.	"	1 50					
	"	Do.	"	1 00					
	29	Do.	"	1 25					
Aug.	9	Do.	67	50					
	"	"		1 00					
	14	"	69	11 45					
"	27	"	71	49 00					
	30	"	"	1 90					
Sept.	3	"	73	1 00					
	5	"	"	60					
	"	"	"	1 50					
	9	"	73	1 20					
	10	"	"	3 50					
	12	"	"	75					
	14	"	75	3 50					
	16	"	"	50					
"	21	"	75	1 50					
"	"	"	"	2 50					
Oct.	1	"	77	1 00					
	3	"	"	1 00					
"	8	"	79	351 85					
				$1,050 90					$1,050 90

61 88.] L. DILLENBERG.

1867.		Dr.			1867.		Cr.		
Oct.	8	To am't from	68	$1,050 90	Oct.	19	By balance		1,056 90
"	12	" cash	79	4 00					
"	14	" cash	"	1 00					
"	15	" cash	"	1 00					
				1,056 90					1,056 90
		Forwarded to ledger No. 3.							

62 Page 7.] L. DILLENBERG. [Book 3.

1867.							
Oct.	19	To stock	1	1,056 90	By balance		1,601 45
"	21	" cash	3	70			
"	22	" "	3	330 00			
"	22	" "	3	5 00			
"	26	" "	7	31 50			
"	28	" "	7	24 26			
Nov.	4	" "	13	1 40			
"	5	" "	14	1 00			
"	7	" "	16	2 75			
"	9	" "	18	85			
"	13	" "	20	4 40			
"	19	" "	25	10 62			
"	21	" "	26	2 00			
"	22	" "	26	2 25			
"	25	" "	27	1 00			
"	25	" "	28	3 90			
"	26	" "	28	7 00			
"	27	" "	29	25 00			
Dec.	2	" L. Luchs	32	65 00			
"	4	" cash	33	50			
"	5	" cash	35	10 10			
"	10	" "	39	3 00			
"	10	" "	40	1 75			
"	12	" "	42	50			
"	13	" "	42	1 00			

L. DILLENBERG—Continued.

1867.							
Dec. 16	" "	44	35				
" 21	" "	48	1 00				
" 23	" "	50	1 67				
" 25	" "	51	5 95				
" 30	" "	54	1 00				
			1,601 45				1,601 45
1868.	To balance		1,601 45		By amount transf. to folio 8.		1,794 49
Jan'y 1st	To cash	58	1 15				
" 6	" "	60	185 39				
" 8	" "	63	1 00				
" 8	" m'd'se	63	5 50				
			1,794 49				1,79449

63 Page 8.] L. DILLENBERG. [Book 3.

1868.	Am't b'ght forward	7	1,794 49				
Jan'y 11	To cash	65	7 50		By balance		2,085 76
" 21	" "	69	2 00				
" 24	" "	71	35				
" 27	" "	73	1 50				
" 29	" "	74	3 00				
Feb'y 6	" "	78	1 75				
" 17	" "	84	3 50				
" 17	" "	84	2 50				
" 20	" "	87	2 50				
" 22	" "	88	10 00				
" 26	" "	89	1 50				
" 28	" "	91	13 00				
" 29	" "	92	54 00				
M'ch 14	" "	100	1 00				
" 17	" "	101	50				
" 23	" "	104	40				
" 25	" "	105	1 75				
" 30	" "	107	3 55				
Ap'l 4	" "	112	75				
" 6	" "	113	1 12				
" 8	" "	116	1 00				
" 16	" "	121	70				
" 20	" "	123	30				
" 20	" "	123	5 00				
" 27	" "	127	106 00				
" 30	" "	130	65				
May 1	" "	132	10 00				
" 4	" "	133	35				
" 12	" "	139	5 00				
" 14	" "	140	1 00				
" 15	" m'd'se	141	6 60				
" 16	" cash	141	1 25				
" 20	" "	144	12 00				
" 28	" "	150	29 25				
			2,085 76				2,085 76
					Transferred to folio 9		

64 Page 9.] L. DILLENBERG. [Book 3.

				1868.			
June	Am't b'ght forward		2,085 76	Aug. 10	By balance		2,119 99
" 3rd	To cash	152	9 00				
" 4	" "	157	4 00				
" 6	" "	158	1 50				
" 8	" "	158	2 00				
" 9	" "	159	3 50				
" 11	" "	160	5 00				
" 15	" "	162	3 00				
" 16	" "	163	2 00				
" 26	" "	169	75				
July 3	" "	175	70				
" 10	" "	178	1 00				
Aug. 7	" "	196	1 25				
" 8	" "	"	50				
			$2,119 96				$2,119 96
1868.							
Aug. 11	To balance		2,119 96				
	Forwarded to ledger No. 4.						

65 Page 4] L. DILLENBERG. [Book 4.

1868.		Dr.			1868.		Cr.		
Aug.	11	To stock	1	2,119 96	Sept.	8	By cash	24	72 00
"	13	" cash	5	5 00	Dec.	10	" balance	178	3,309 71
"	14	" "	"	65 25					
"	19	" "	9	35 00					
"	20	" "	"	4 50					
"	22	" "	11	200 00					
"	"	" mdse	"	5 00					
"	24	" cash	12	7 00					
"	31	" "	16	401 25					
Sept.	5	" "	22	1 50					
"	15	" "	31	50					
"	23	" "	37	1 00					
"	26	" "	39	2 75					
"	28	" "	42	50					
Oct.	1	" "	46	50					
"	3	" "	49	1 50					
"	5	" "	50	2 60					
"	"	" "	51	8 00					
"	9	" "	54	2 70					
"	13	" "	58	3 00					
"	22	" "	62	70					
"	23	" "	63	385 00					
"	24	" "	64	3 00					
"	26	" "	65	7 75					
"	27	" "	67	3 00					
"	31	" "	69	1 50					
"	31	" "	70	1 75					
Nov.	4	" "	73	1 50					
"	7	" "	75	20 50					
"	9	" "	76	1 50					
"	10	" "	78	50 00					
"	13	" "	80	19 00					
"	21	" "	86	1 00					
"	30	" "	91	1 00					
Dec.	3	" "	95	15 00					
"	8	" "	98	1 50					
"	10	" "	"	50				178	
				3,381 71					3,381 71

66 Page 178.] L. DILLENBERG. [Book 4.

		Dr.					Cr.		
Dec.	14	To balance	4	3,309 71	Jan'y	1	By balance	....	3,342 31
"	23	" cash	100	85					
"	24	" "	105	10 00					
"	26	" "	106	14 25					
"	24	" "	107	2 50					
		" mdse	108	5 00					
				$3,342 31					3,342 31
1869.									
Jan.	1	To balance, stock		$3,342 31					
"	"	" cash	112	2 25					
"	2	" "	"	26 00					
"	4	" "	113	3 00					
"	5	" "	114	3 00					
"	11	" "	118	3 75					
"	16	" "	119	110 03					
"	21	" "	126	2 50					
"	22	" "	127	5 00					
"	"	" "	"	1 50					
"	25	" "	129	1 50					
"	28	" "	131	5 00					
"	29	" "	"	1 00					
"	30	" "	132	1 50					
Feb.	3	" "	136	1 95					
"	5	" "	138	1 00					
"	8	" "	139	60					
"	9	" "	140	150 00					
"	11	" "	141	50					
"	12	" "	142	5 00					
"	"	" "	"	40					
"	18	" "	146	34 00					
"	20	" "	147	75					
"	22	" "	148	2 00					
"	27	" "	153	1 50					
March	1	" "	154	6 00					
"	2	" "	156	50					
"	4	" "	158	1 00			By balance	204	3,713 54
				$3,713 54					3,713 54

67 Page 204.] L. DILLENBERG. [Book 4.

1869.		Dr.				Cr.		
March		To balance	178	3,713 54	June 31	By cash	237	5 00
"	15	" cash	166	50				
"	18	" "	169	3 00				
"	22	" "	172	1 85				
"	24	" "	174	64 50				
"	25	" "	175	2 00				
"	29	" "	177	1 00				
Ap'l	26	" "	195	75				
"	27	" "	197	2 95				
"	28	" "	"	6 20				
May	1	" "	199	1 00				
"	3	" "	200	1 00				
"	"	" "	201	1 45				
"	7	" "	204	50				
"	12	" "	208	75				
"	17	" "	211	2 50				
"	19	" "	212	90				
"	"	" "	213	4 40				
"	24	" "	217	71 45				
"	25	" "	218	17 00				
"	"	" mdse	"	5 50				
"	28	" cash	220	1 00				
"	29	" "	221	5 50				
"	31	" "	"	10 50				
June	3	" "	223	2 75				
"	4	" "	225	50				
"	7	" "	227	5 50				
"	14	" "	231	2 50				
"	19	" "	234	1 00				
"	21	" "	237	217 00				
"	"	" "	"	18 00				
"	"	" "	238	4 15				
"	26	" "	241	75				
"	28	" "	242	75				
"	29	" "	243	7 00				
July	3	" "	246	100 00				
"	"	" mdse	"	4 50		By balance	205	4,279 14
				$4,284 14				4,284 14

68 Page 205.] L. DILLENBERG. [Book 4.

1869.		Dr.				Cr.		
July		To balance	204	4,279 14		By balance		4,500 89
"	13	" cash	252	11 25				
"	"	" "	"	25				
"	15	" "	253	1 00				
"	"	" "	255	2 00				
"	16	" "	256	1 00				
"	17	" "	"	2 00				
"	"	" "	"	8 00				
"	"	" mdse	"	1 00				
"	19	" cash	257	17 00				
"	27	" "	262	3 00				
"	"	" "	"	2 00				
"	29	" mdse	263	1 00				
"	31	" cash	265	3 50				
"	"	" "	"	8 00				
Aug.	2	" "	266	50				
"	3	" "	267	1 00				
"	4	" "	268	50				
"	5	" "	"	50				
"	7	" "	270	5 00				
"	9	" "	271	30 00				
"	14	" "	276	5 00				
"	20	" "	281	3 00				
"	21	" "	282	81 00				
"	"	" "	"	5 50				
"	"	" "	"	4 00				
"	24	" "	284	2 25				
"	25	" "	"	50				
"	27	" "	286	2 00				
"	30	" "	287	7 00				
Sept.	1	" "	289	1 00				
"	4	" "	292	12 00				
				$4,500 89				$4,500 89
Sept.	7	To balance		4,500 89	Sept. 22	By balance		4,500 89

Carried to acc't of L. Lucks.
L. D. withdrew from the business.

69 And the plaintiff also offered in evidence the three statements of account made by the said Charles F. Myers, bearing date respectively August 10th, 1868, January 1st, 1869, and September 22, 1869, in the words and figures following, to wit:

No. 1.

AUGUST 10TH, 1868.

STATEMENT.

Resources of L. Luchs and Co.

Outstanding accounts due them, &c	$2,444 70
Bank of Washington, " " "	3,141 58
Inventory of stock taken this 10th day of August, 1868	11,481 22
	$17,067 50
L. Dillenberg's account	2,119 96
	$19,187 46

LIABILITIES.

70 Accounts due to sundry parties by L. Luchs & Co., for m'd'se	1,998 61
Due L. Luchs account, m'd'se & cash bal	6,604 75
	$8,603 36
Profits	$10,584 10

No. 2.

JANUARY, 1ST, 1869.

STATEMENT.

Resources of L. Luchs & Co., as follows:

Outstanding accounts due the firm, amounting to	$1,656 88
Cash to our credit deposited in the Bank of Washington	1,038 73
Cash on hand in store to date	633 80
Inventory of stock of this date	10,326 96
Am't due L. Luchs & Co. by L. Dillenberg	3,343 31
	$16,998 68

Liabilities, as follows:

Total am't of accounts due to sundry parties for merchandise to date	1,959 28
Balance due L. Luchs by L. Luchs & Co	2,377 45
	4,336 73

71	Profits in full to date	$12,661 95
	Profits to August 11th, 1868, as per statement	10,584 10
	Profits from Aug. 11th, 1868, as per statement to January 1st, 1869, amounting to	2,077 85

No. 3.

STATEMENT.—ASSETS.

Stock on hand as per inventory	$11,960 18
Cash in bank	1,200 00
Outstanding acc'ts due the firm	1,011 31
	$13,171 40
Levi Dillenberg owes the firm	4,500 89
L. Luchs	1,164 06
	19,836 44
Liabilities of the firm	3,253 84
Total profits, including outstanding acc'ts	16,582 60
Amount due L. Dillenberg to date, as per above statement	$8,291 30
L. Dillenberg is charged with	4,500 89
Balance due L. Dillenberg	$3,790 41
Deduct cash paid him	171 53
	3,618 88
72 Sept. 22d, 1869. Deduct cash paid Dillenberg this date	18 88
	$3,600 00

Paid Dillenberg in full, as per notes, as follows, bearing date Sept. 1, '69:

Dec. 1, '69.	1 note at 3 months	$600 00	
Feb. 1, '70.	1 " " 5 "	600 00	
April 1, '70.	1 " " 7 "	600 00	
June 1, '70.	1 " " 9 "	600 00	
Aug. 1, '70.	1 " " 11 "	600 00	
	Pd. 1 " one day after date	600 00	
			3,600 00

And the plaintiff also offered to read to the jury, as testimony, a letter of May 21st, 1869, written to the defendant by the said Charles F. Myers, which letter, it was admitted by defendants' counsel, was appended to the application of May 4th, 1869, when said application came into his hands, but the counsel for the defendant interposed and objected, whereupon the chief justice, presiding at the said trial, held that the said letter was proper

evidence, and admitted the same, notwithstanding said objections;
73 to which ruling the defendant, by its counsel, then and there duly excepted. Said letter is in the words and figures following to wit:

WASHINGTON, D. C., *May* 21*st*, 1869.

CONNECTICUT M. L. INS. CO.:

GENTLEMEN: Your favor requesting information as to the cause which induced Mr. Luchs to insure the life of his partner, Dillenberg, having through your agent, Mr. Marble, been brought to my attention, may briefly be answered as follows:

About three years ago Mr. Luchs took into equal partnership with him his brother-in-law, Mr. Dillenberg, and at the solicitation of his wife who desired, by this means to prevent her brother, Dillenberg, from settling in California, which he was then contemplating.

Mr. Luchs finally consented, and gave Mr. Dillenberg an equal
74 share in the profits, but did not stipulate in the writings for any bonus to Luchs for the use of his capital.

The business of Mr. Luchs up to the date of the partnership was comparatively unlucrative considering the business which the firm have been doing since the date of the partnership. And Mr. Luchs now thinks that he has been cheated into a bad bargain—that if he put his capital into the business against the services of Dillenberg, that he, Luchs, does not receive anything for his labor, since Luchs not only put his capital against Dillenberg's labor or services, but his (Luchs) labor or service also into the business.

A short time ago the parties became quite excited over the controversy, when, being intimate with them both, they finally submitted the question to me for arbitration; whereupon I proposed that they should continue in business under their existing agreement, and that Dillenberg should insure his life for the benefit of Luchs. But Dillenberg resolutely refused to pay the premium, since which time I have persuaded Luchs as a
75 means of "getting even" to insure Dillenberg at his own risk.

I need only add that I have persuaded Luchs to insure Dillenberg, partly in the capacity of a solicitor of life insurance and with a view of obtaining a percentage upon the premium, as per an agreement entered into with your agent, Mr. Marble.

Yours, respectfully,

C. F. MYERS.

The plaintiff further produced evidence tending to show that about the time it was determined to procure the said policy of insurance it was agreed and understood that the said Levi Dillenberg should retire from the said firm within about one year from that date, as he desired at that time to abandon that business and go to the West to engage in business on his own account; and that the said policy of insurance was duly issued by the said insurance company and forwarded through the general agent of the company and delivered to the said Dillenberg; and that the said Levi Dillenberg paid the premium for one year at that time, and subse-
76 quently and at the maturity thereof paid the premium for the second year; and that the said Levi Dillenberg kept the said policy of insurance in his own possession until a short time after the dissolution

of said firm, when he was about to depart for the West, when he handed the same to the said plaintiff, and that the said plaintiff thereafter paid the premiums upon the said policy himself, and that such premiums were paid down to and to include date of the death of said Levi Dillenberg.

And the plaintiff further offered evidence tending to show that the affairs of the said firm were conducted in the same manner until some time in the month of September, 1869, when the firm was dissolved by mutual consent, and it was found that on a statement between the parties there was due to the said Levi Dillenberg on account of the profits of the said concerns the sum of $3,600.00, as shown by the said books of account, and as shown by the said statement of account bearing date September 22ond, 1869, and that thereupon the said Leopold Luchs executed and delivered to the said Levi Dillenberg his six promissory notes for
77 $600.00 each, bearing date on the first day of September, 1869, and payable respectively one day after date and at three, five, seven, nine, and eleven months, and that the said notes were all paid either at or before maturity by the said Leopold Luchs.

The witness Myers, for the said plaintiff, also testified that if the said partnership had been closed up at the date of the application aforesaid there would have been due to the said Levi Dillenberg from the said plaintiff the sum of about $3,000.00.

The plaintiff then offered evidence tending to show that said Dillenberg died May 8th, 1876, and that the proofs of death were transmitted to the said company, and it was admitted by counsel for defendant that they were received by the defendant within six days after the date thereof, to wit, on or about May 26th, 1876, and which are in the words and figures following, to wit:

78 CONNECTICUT MUTUAL LIFE INSURANCE COMPANY.

No. 1.—*Claimant's certificate.*

Claimant's name & residence?	Leopold Lucks, No. 714 Sixth street, bet. G & H, Washington, D. C.
Number, date, and amount of policy?	No. 95299. Date, June 2d, 1869. $5,000.
In what capacity or by what title do you make the claim?	Beneficiary.
Name of deceased in full?	Levi Dillenberg.
How long have you known deceased?	Since 1866.
Residence of deceased since above policy was issued?	Washington, D. C.
The several occupations of deceased since the above policy was issued?	Do not know of any, unless attending as partner into his and my business.
Place and date of birth of deceased?	Rodenberg, Germany; born June 7th, 1837.
Place and date of death?	Government Insane Asylum Washington, D. C., May 8th, 1876

79 *a.* Remote cause of death? *a.* Refer to Dr. Nicholas' statement.

b. When did health of deceased first begin to be affected? *b.* About Dec. 1st, 1870.

c. Immediate cause of death? *c.* Refer to Dr. Nicholas' statement.

d. Duration of last illness? *d.* Refer as above.

e. Give every particular in relation thereto within your knowledge? *e.* Do not know of any unless disappointment in marriage.

Name and residence of every physician who attended or prescribed for deceased during the last year prior to death, or since he became out of health? Dr'. Behrend, Holston, and Nichols.

Did the deceased violate any condition of the above-mentioned policy, in respect to residence, travel, occupation, use of spirituous liquors, duelling, suicide, violation of law, or had he been convicted of felony? Not to my knowledge.

(Signed) LEOPOLD LUCHS.

Oath.

80 DISTRICT OF COLUMBIA,
County of Washington, ss:

On the nineteenth day of May, A. D. 1876, personally appeared before me the above-named Leopold Luchs, and made oath that the answers by him above made and subscribed are true and full, to the best of his knowledge and belief.

[NOTARIAL SEAL.] SAM'L C. MILLS,
Notary Public.

No. 2.—*Attending physician's certificate.*

All answers must be in the physician's own handwriting.

How long have you practised as a ph's'cian, and where did you receive your medical education? Practised as a physician since March, 1843. New York City, and Philadelphia, Pa.; also Providence, R. I.

Name of deceased? Levi Dillenberg.

Place and date of death? Gov't Hospital for the Insane, May 8th, 1876, near Washington, D. C.

81

How long had you known deceased? Since December 7th, 1870.

How long had you been his usual medical adviser? From Dec. 7th, 1870, to June 30th, 1871, and from Dec. 31st, 1872, to May 8th, 1875.

a. Since you have known de- *a.* Tobacconist.

ceased, what have be'n his several occupations, and

b. His places of residence?

b. Gov't Hospital for the Insane, and Washington, D. C.

Duration of last illness?

Been insane, to my knowledge, since December, 7th, 1870. Had pulmonary consumption about one (1) year.

Date of your first visit, or prescription, in last illness?

Under constant medical treatment from Dec. 31st, 1872, to the day of his death.

Date of last visit?

May 8th, 1875.

a. State the remote cause of death; if from disease, give the predisposing cause, the first appearance

82 of its symptoms, its history, and the symptoms present during its progress?

a. Chronic insanity; the cause of which was or is unknown.

b. State the immediate cause of death?

b. Pulmonary consumption.

c. If from any cause other than disease, state the medical and other facts connected therewith?

c. No cause of death other than those above given was known to the undersigned.

d. Was a post mortem examination made; by whom, and with what results?

d. No post mortem examination was made.

Had deceased any other disease, acute or chronic, or had he ever had any injury or infirmity?

None was known to the undersigned.

Was there anything in his habits, or mode of life predisposing him to disease?

Nothing was known to the undersigned.

Did deceased use spirituous liquors?

The history of his case denominates him (*a*) "temperate" and nothing to the contrary is (*b*) known to the undersined.

a. To what extent?

b. With what effect?

State the apparent age of deceased?

Thirty-nine (39) years.

83 CHARLES H. NICHOLS, *M. D.*,
Supt. Gov't Hospital for the Insane, near Washington, D. C.

Oath.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On this eighteenth day of May, A. D. 1876, personally appeared before me the above named Charles H. Nichols, M. D., a physician in regular standing, and made oath that the answers by him above made and subscribed are true and full, to the best of his knowledge and belief.

[NOTARIAL SEAL.] SAM'L C. MILLS,
Notary Public.

No. 486, La. ave.

No. 3.—*Friend's certificate.*

Name of deceased in full?	Levi Dillenberg,
Residence?	Washington, D. C.
Occupation?	Tobacco & segar dealer.
Date and place of death?	U. S. Asylum, W., D. C,
Cause of death?	Refer to his Dr., Nicholas.
84 Was deceased insured in the Connecticut Mutual Life Insurance Company?	Yes.
Number, date, and amount of policy?	No. 95299; date, June 2ond; $5,000.
Do you know the deceased to be the person insured by the above-named policy by the name above given?	I do.
Have you any interest in the above policy?	None whatever.

Z. TOBRINER.

Oath.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On this nineteenth day of May, A. D. 1876, personally appeared before me the above named Zacharia Tobriner and made oath that the answers by him above made and subscribed are true and full, to the best of his knowledge and belief.

[NOTARIAL SEAL.] SAM'L C. MILLS,
Notary Public.

85 No. 4.—*Undertaker's certificate.*

Name of deceased?	Mr. Levi Dillenberg.
Residence and occupation?	I do not know.
Date of birth?	I do not know.
Date and place of death?	May 8th; Insane Asylum.
Did you inter the deceased; when and where?	I did; in the Southern Israelite Cemetery.
Do you know the body interred by you to be that of the person named by you as the deceased?	I do.
Your name, residence, and post-office address?	Wm. Friess; No. 1808, 6 st. n. w., Washington, D. C.

Oath.

DISTRICT OF COLUMBIA,
County of Washington, ss:

On this nineteenth day of May, A. D. 1876, personally appeared before me the above-named William Freiss and made oath that the answers by

him above made and subscribed are true and full, to the best of his knowledge and belief.

[NOTARIAL SEAL.] SAM'L C. MILLS,
Notary Public.

86 DISTRICT OF COLUMBIA, *to wit:*

I, R. J. Meigs, clerk of the supreme court of the said district, hereby certify that Sam'l C. Mills, whose genuine signature is subscribed to the foregoing certificates, was, at the time of signing and attesting the same, a notary public for said District, duly commissioned and qualified, and authorized to take acknowledgments and to administer oaths, and that his attestation thereto is in due form.

Witness my hand and the seal of said court this 19th day of May, 1876.

R. J. MEIGS, *Clerk.*
By L. P. WILLIAMS, *Ass't Clerk.*

The plaintiff having closed his testimony, the defendant moved the court to direct that a verdict be rendered for the defendant, for the reason that it did not appear, in the first place, that there was any insurable interest in the life of Levi Dillenberg upon which a policy of insurance could be issued in favor of Leopold Luchs; and furthermore that upon the terms of the said policy of insurance no action could be main-
87 tained by the plaintiff, because the policy by its own terms promised to pay to the assured, his executors, administrators, or assigns, and to no other person, but the court overruled the motion and directed the trial to proceed. Thereupon the defendant, to maintain and prove the issue upon its part, offered evidence tending to show that the said Levi Dillenberg had, on or about the 17th day of February, 1869, made application to the defendant for a life insurance policy, and offered and read the same in evidence, in the words and figures following, to wit:

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY OF HARTFORD, CONN.

Declaration.

I, Levi Dillenberg, of Washington City, District of Columbia, being desirous of effecting an assurance with The Mutual Connecticut Life Insur-
88 ance Co. in the sum of five thousand dollars upon the life of self, of Washington City, in the District of Columbia, during the whole term of life, do hereby declare that my age next birthday will be thirty-two years; that I am now in good health, of sober and temperate habits, and do usually enjoy good health, and that the following answers and statements are correct and true, in which I have not concealed, withheld, or misrepresented any material circumstance in relation to the past or present state of my health, habits of life, or condition which may render an assurance on my life more than usually hazardous, or with which the directors of said company ought to be made acquainted.

And I do hereby agree that the answers given to the following questions and the accompanying statements and this declaration shall be the basis and form a part of the contract or policy between me and the said

company, and that if the same be not in all respects true and correctly stated the said policy shall be void, and all moneys which may have been paid on account thereof, and all dividend credits which may accrue there-
89 from, shall be forfeited to said company; and I further agree that the assurance hereby proposed shall not be binding on said company, and no policy shall attach until the amount of premium as stated therein shall be paid to said company in the life-time of said assured.

Dated at Washington, D. C., this 17th day of February, 1869.

LEVI DILLENBERG.

Witness:

C. F. MYERS.

Questions and answers above referred to.

1. Name and residence of the person for whose benefit the assurance is proposed?	Levi Dillenberg, Washington, D. C.
☞ Give christian names in full and plainly written. If wife or husband, so state.	
2. Name and residence of the person whose life is proposed to be insured?	Levi Dillenberg, Washington, D. C.
90 ☞ See note as above. If wife or husband, father, mother, brother or sister of applicant, so state.	
3. Occupation of person whose life is proposed to be insured, and whether married or single?	Merchant and single.
4. Place and date of birth of the party whose life is to be insured, giving month and days?	Germany, April 7th, 1837, near Frankfort.
5. Age next birthday?	32 years.
6. Is the party now and has he always been of temperate habits?	Yes.
7. Has the party resided out of the United States; and if so, where, for what purpose and period, and what was the effect of such residence on his health?	Born in Germany; came to U. S. before 14th year.
8. Has the party been vaccinated or had the small-pox?	Been vaccinated and not had the small-pox.
9. Grand-parents living,	Grand-parents dead; don't know
91 ages, health?	ages; don't know cause of death.
Parents living, ages, health.	Parents dead, 2; ages, don't know; cause of death, father, old age; tumor, in the case of mother.
Brothers living, one; ages, 48; health, good.	Brothers dead, one; ages, 23; cause of death, accident.

Sisters living, 3; ages, 35, and 24, and 56; health, good.

Sisters dead, one; ages, 5; cause of death, fever.

10. Has grand-parent, parent, brother, or sister ever been afflicted with insanity, or with pulmonary, scrofulous, cancerous, or any other hereditary disease?

No.

11. Has the party ever had any of the following diseases, viz:

Apoplexy, gout, asthma, insanity, bronchitis, liver complaint, consumption, paralysis, cholic, palpitation, diphtheria, quinsy, dyspepsia, rheumatism, dysentery, rupture,

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disease of the heart, fits, scarlet fever, fistula, spitting of blood, dropsy, disease of urinary organs, disease of uterine organs? If so, state cause, character, frequency, and duration of the disease, and whether a perfect recovery.

Have had slight attacks of dyspepsia.

12. Has the party been afflicted during the last seven years with any severe or acute constitutional disease, and what?

No.

13. Is the party now afflicted with any disease or disorder, and what?

None.

14. Has the party ever met with any accident or serious personal injury; if so, what was it?

None.

15. Name and residence of the party's usual medical attendant, or (if he have none) of some other medical person to be referred to for information as to his health?

Doctor Magruder.

93

16. Name and residence of an intimate friend, to be referred to for similar information.

L. Luchs.

17. Amount of insurance applied for, $5,000.

Five thousand dollars.

18. Term for which the insurance is desired and specific plan.

Whole term of life; life annual plan, half note; table, 1.

19. Has a previous proposal been made for insurance in this or any other company; and, if so, was it accepted or not; and, if accepted, for what amount?

Been insured in the Travellers' Life and Accident.

20. Is the party aware that any untrue or fraudulent allegation made in effecting the proposed assurance will render the policy void; and

Yes.

that all payments of premiums made thereon, and dividend credits accruing therefrom, will be forfeited?

94 LEVI DILLENBERG.

Witness:
C. F. MYERS.

And the defendant further offered evidence tending to show that Bernhard Dillenberg, a brother of Levi Dillenberg, did, on or about the 26th day of February, 1863, commit suicide in the city of Washington, and in the said house of the plaintiff, on Eighth street, by cutting his throat with a razor when alone, nobody seeing him committing the act; and that at the time of committing such act he was sick and emaciated, and had been sick for many months; and that the said Leopold Luchs knew of this fact at the time of making his said application of May 4th, 1869, and offered testimony tending to show that at the time the examining officer of the defendant examined the said application of May 4th, 1869, to determine whether or not a policy of insurance should be issued thereon, he discovered that the interrogatory addressed
95 to the applicant as to the number of brothers dead and cause of death, was left unanswered, and that thereupon he referred to the other application of February 17th, 1869, signed by Levi Dillenburg, and there ascertained that the cause assigned for the death of the said deceased brother was "accident," and, that upon such examination the policy above set forth was issued as aforesaid by the defendant. The defendant further offered evidence tending to show, that on the 7th day of December, 1870, the said Levi Dillenburg, was sent to the insane asylum in the District of Columbia, known as the St. Elizabeth Hospital for the Insane, where he was detained under treatment until the thirtieth day of June, 1871, when he was released and given into the custody of his kinsmen, and that he was returned again on the 31st day of December, 1872, and from the date last mentioned until the time of his death, in May, 1876, he was confined in the insane asylum, and thereupon the defendant produced Dr. CHASE, of the Insane Hospital, who testified as follows, to wit:

96 By Mr. TOTTEN:

Q. What is your name, sir?
A. Robert H. Chase.
Q. What is your profession?
A. Physician.
Q. Where are you engaged now?
A. At the Government Hospital for the Insane.
Q. How long have you been there?
A. About six years.
Q. Not longer?
A. No, sir.
Q. What is the book you hold in your hand?
(Referring to book produced by the witness.)
A. This is one of the records of the institution. It is a book that was used up to 1873, in taking down the history of patients.

Q. Will you turn to the date of Dec. 7th, 1870, and see what you have recorded there in relation to Levi Dillenberg. Read it to us.

(The witness turned to the place indicated.)

Please mention the heads, and then give us the statement under each head.

The WITNESS. I would like to ask if it is proper that all of this should be divulged? It was given as confidential matter to the physicians at the time.

97 Q. They are public records of the Insane Asylum, are they not?

A. Yes, sir; but this was given in confidence.

The COURT. It is all the better for that, is it not?

The WITNESS. At one time the patient was a private patient.

Mr. TOTTEN. I guess there is no objection.

Mr. WORTHINGTON. I do not raise the question if the court does not.

The COURT. This is a public institution and a public record, and with objection it would be competent; without objection it certainly is competent.

Q. Go on, and give us the first head, and what recorded under it.

A. (Reading.) "Admitted Dec. 7th, 1870; name, Levi Dillenberg; white; indigent patient; single; age, 30; nativity, Germany; occupation, tobacconist; church, Hebrew; education, common school; morals, good; temperate, yes." Then under the head of "Hereditary," it says, "No; although a brother of supposed strong mind cut his throat when far gone in consumption. Previous attack, better and worse for four years."

Q. Haven't you got something more? What is that (indicating an entry)? You did not read that in pencil.

98 A. (Reading.) "Previous attack, better and worse for four years."

By Mr. WORTHINGTON:

Q. That is in pencil?

A. It is pencil; yes, sir.

Q. Not in the original record?

A. It is in the same handwriting, but probably it was put in there—I should judge it was put in, by the same handwriting.

Q. It is all pretty much guess work with you as to how that got there, I suppose?

A. I don't know at all.

By Mr. TOTTEN:

Q. Go on.

A. (Reading.) "Entire duration of disease, four or five years; no cause given."

Q. I did not hear the other head. What was the heading?

A. "Cause," cause of disease not given.

Q. What is the next?

A. "In any other hospital before?" Answer. "No." "Entire duration of disease, four or five years," in pencil; that is another entry that is written in pencil. "Not subject to fits; general health, fair; suffers from constipation." Under the heads of "Suicidal," "Assaulting," it

99 is marked "No." "Destructive, yes; breaks a little. Filthy, no;

appetite, variable. Sleep, variable. Condition on admission, mental dementia; chronic; simple." Nothing under the physical heading. "Synopsis of phenomena of case, talking to self; unreasonable; praying; strong mourning for dead parents; incoherent; wandering; sometimes nearly or entirely unable to articulate; staggering; not noisy. By whom brought, brother-in-law, Leopold Luchs, tobacconist, corner of 7th and F. streets NW. Under the head of "Benevolent order," it is marked, "yes," in lead pencil, with an interrogation mark. "Address of friends, brother-in-law, L. Luchs, tobacco, corner 7th and F NW. By whom brought, Mr. Luchs, brother of brother-in-law, and same address. Discharged, June 30th, 1871; left on morning of July 1st, with Mr. Luchs, to go immediately to train to go to Pennsylvania upon a friend's farm."

Q. Now turn to the next; when he came back the next time.

The WITNESS. I guess may be I said "by whom brought" the first time; it should have been "by whom clothed."

By Mr. WORTHINGTON:

Q. By whom was he clothed?

A. It mentions, by his brother-in-law.

By Mr. TOTTEN:

100 Q. Now please read the other record in the same way.

A. (Referring to record.) Then on Dec. 31st, 1872, he was readmitted. "Levi Dillenberg," they have got it this time; he is a pay-patient this time. "Single; 32 years of age; nativity, Germany; tobacconist; education fair; morals good; temperate; no hereditary taint; previous attack, one."

By Mr. WORTHINGTON:

Q. There is nothing in pencil there about his brother?

A. No, sir. I should say that this statement is made up partly from the old record, and what the friends stated in regard to him when they brought him back. (Reading.) "Duration of disease, six years; cause, unknown; no other hospital before this one; no fits; suicidal at times." Then under "condition on admission," it says, "mani'cal" under the "mental." Then "mental phenomena; excited and melancholy by turns; thinks every one is down on him; clothed by friends; address of friends, Leopold Luchs, brother-in-law, corner 7th and F streets, Washington, D. C.; brought by Leopold Luchs."

101 Q. Did you have anything to do with making that last record?

A. No, sir.

Q. Were you there at the time?

A. Yes. I had been there only one month then. I came in November, and this was December, 1872. It was before I had charge of the case.

Q. In the first record, as to the manifestations, you have recorded there, "Breaks a little." What do you mean by that? Do you know?

A. I don't know what that alludes to. It probably means that he had a destructive tendency, and would break things about the house.

Q. Looking-glasses and pianos?

A. Yes, sir.

R. D. CHASE recalled.

By Mr. WORTHINGTON:

Q. I would like to ask you a question as to the records you have produced here. Where were these statements about the history of Dillenberg made up?

A. They were made up from the accounts given by the persons that came with Mr. Dillenberg when they brought him to the institu-
102 tion; that is, the first one was, and the subsequent ones——

By Mr. TOTTEN:

Q. (Interposing.) You do not know that fact?

A. I know in regard to the last one.

By Mr. WORTHINGTON:

Q. What about the last one?

A. The last one was made up partially from what Mr. Luchs told me when he came with Mr. Dillenberg, and from the former records of the case.

Q. Can you distinguish the part that was made up at the time from Mr. Luchs' statement from the part that was taken from the former record of the case?

A. I cannot.

The defendant further offered evidence tending to show that the agent in charge of the business of the said defendant in the District of Columbia, during the year 1869, and before that time, was A. H. Dillon, jr., whose office and place of business was in the city of Baltimore, and that the said A. H. Dillon employed as his subordinates the copartner-
103 ship firm of Lincoln and Willard, in the city of Washington, to attend to the business for him in the said last-named city; and that the said Lincoln and Willard had no correspondence with and no responsibility to the defendant, and were wholly responsible to the said A. H. Dillon, in the city of Baltimore, and that they had given him security for the faithful discharge of their duties for him in the conduct of the said business.

The defendant further offered evidence tending to show that the agent who transacted the business for Mr. Dillon prior to the employment of Lincoln and Willard as aforesaid, was one Marble, who had some time prior to April, 1869, departed from the District of Columbia, and that the said firm of Lincoln and Willard took charge of the business under the said Dillon some time in the month of April, 1869, and continued so in charge of it for about one year; and, further, that the said declaration and application of May 4th, 1869, is not in the handwriting of either Lincoln or Willard.

On cross-examination of W. S. Lincoln, who was a witness for
104 the plaintiff, the books of said firm were produced, which showed the payment to Chas. F. Myers of $18.75 on July 3rd, 1875, which was one-half of the commission on the first premium of the policy in suit.

The defendant also offered evidence tending to show that a policy of insurance was issued to Levi Dillenberg, in pursuance of his application of

February 17th, 1869, but that the said policy expired because the premium was not paid, some time in March, 1870.

The defendant further offered evidence tending to show that no officer of the said company had any information of the insanity of the said Levi Dillenberg until the reception by their agent in the city of Washington, A. C. Gibbs, of the said proofs of death above set out; and that at the time the said proofs of death were first furnished to the agent of the said defendant company the answer to the question put to the attending physician, to wit, "Duration of last illness?" was in these words, to wit: "Been insane for about ten years;" and that when the said agent invited the attention of the agent for the said plaintiff, who brought the
105 said paper to him, to this answer, the said agent insisted upon taking away, and did take away, the said paper, and subsequently brought it back, with the said words "for about ten years" erased, and the words "to my knowledge, since December, 1870," written over the said words so erased as aforesaid.

The defendant further offered evidence tending to show that suicide in the family is a material and serious objection to issuing a policy upon the life of an individual belonging to such family, and that it is a circumstance which ought to be made known to the officers of a life insurance company solicited to issue a policy.

The plaintiff thereupon recalled the said CHARLES F. MYERS, who being interrogated, further said, that after the arrangement had been made to take out this policy, he went to Mr. Willard, of the firm of Lincoln and Willard aforesaid, and received from him, already filled up, the said declaration and application of May 4th, 1869; and that said Willard told him to take the paper and have it signed, and that he (Myers) had
106 never before seen said paper and did not read it at that time, and that he brought it the store of the said firm and asked the said plaintiff and said Dillenberg to sign the said paper, telling them at the same time that it was a "mere matter of form," which he believed to be true, and that thereupon the plaintiff and Dillenberg signed the paper without reading it, and also the application of February 17th, 1869, was his (Myers) handwriting; and that he, the witness, received from Lincoln and Willard a part of the cash commission allowed to them by said Dillon for their services in the matter. That the offices of said Lincoln and Willard and of the witness Myers were in the same building and opposite each other, with a hall passing between them, and that the office of said Marble adjoined Lincoln and Willard before he left the city.

The plaintiff also offered in evidence and read to the jury a letter bearing date March 12th, 1869, addressed to "Hartford Life Insurance Co.," signed "Levi Dillenberg," containing also a note appended thereto
107 bearing the same date, signed by J. W. Bulkley, M. D., all of which are in the words and figures following, to wit:

WASHINGTON, D. C., *March 12th*, 1869.

HARTFORD LIFE INSURANCE CO.:

GENTLEMEN: I was much surprised to learn the exception was taken in regard to the fact of my statement that I had sometimes been subject to the dyspepsia.

In response I would state that several times, say two or three months,

my partner has been absent from the city purchasing goods, when I have been unusually confined to business, and at such times have suffered with a headache which I have attributed to dyspepsia. At such times my relief is a walk of about two miles, which accomplished, I am invariably relieved until again confined, as above stated.

108 Yours, respectfully,

LEVI DILLENBERG.

Note attached to letter.

WASHINGTON, D. C., *March 12th*, '69.

I have known Mr. Dillenberg for the past twelve years, and during a portion of that period he has been under my care.

I regard him as a sound man.

J. W. BULKLEY, *M. D.*

The plaintiff further offered evidence tending to show that at the time of the death of Bernhard Dillenberg, the said Levi Dillenberg was absent in Nevada, and did not know of the cause thereof, and that on his return the said plaintiff Luchs, to conceal from said Levi what he, Luchs, believed to be the disgraceful facts of the suicide of said Bernhard Dillenberg, told him that the cause of the death of the said Bernhard was accident; that he had injured himself with a nail in opening a box of goods, and that he had died of lockjaw. Also that the said Leopold Luchs testified that he

109 had told the witness Myers, as long back as 1867, that the said Bernhard Dillenberg had committed suicide. But said Myers testified that at the time of the first application, in February, 1869, that he had been told that the cause of Bernhard's death was accident, but afterwards learned that he had committed suicide. And further evidence was offered tending to show that Max Luchs, the brother of Leopold Luchs, conducted the said Levi Dillenberg, December 7th, 1870, to the insane hospital, where he said to the examining physician that he (Dillenberg) had been insane for four or five years; that said Max had never seen said Levi Dillenberg until the spring of 1870, and had never seen Bernhard Dillenberg, and that said Max explained that he made such statement to the examining physician because he was informed that the asylum was crowded with patients, and he feared he might not succeed in getting him into the asylum; said Dillenberg having been at the house of plaintiff, and they were fearful that he would injure the children, or some one else. The plaintiff further offered evidence to the jury tending to prove that the parents

110 of said Levi and Bernhard Dillenberg were sound and healthy persons; that the family was a large one, and that neither insanity nor consumption had ever existed in any member of the family; that said Bernhard Dillenberg was of sound mind up to the hour of his death; that he never had consumption; that said Levi Dillenberg was of sound mind down to the autumn of 1870, when he began to manifest symptoms of insanity, and that the cause of said Levi Dillenberg's insanity was exposure to the sun in the summer of 1870.

The plaintiff further offered evidence to show that Levi Dillenberg was a shrewd, industrious, and skillful business man during the time of his connection with the business of the said firm of Luchs and Company; and

that said Leopold Luchs paid all the premiums on the said policy except the first two, and that he paid them up to the time of the death of the said Dillenberg.

All the testimony being closed, the counsel for the defendant
111 moved the court to direct a verdict for the defendant on the following grounds, to wit: (1). That the plaintiff had no right to maintain this action on the policy of insurance aforesaid, in his own name, because the action should have been instituted in the name of the administrator or other legal representative of the said Levi Dillenberg, deceased; and, (2), because it appears, from the testimony of the plaintiff himself, and of the books of account of the said firm, that the plaintiff had no insurable interest in the life of Levi Dillenberg, and, therefore, that if the policy was to be construed as for the benefit of the said plaintiff, it was void as a wagering policy.

But the court refused to so direct a verdict; to which ruling the defendant, by its counsel, then and there excepted.

And thereupon the plaintiff's counsel prayed the court to give to the jury the following instructions, numbered, respectively, 1, 2, 3, 4, and 5, in the words and figures following, to wit:

112 No. 1.—*Plaintiff's prayers.*

1. If the jury find from the evidence that in May, 1869, the plaintiff and Levi Dillenberg were in partnership, and that to that partnership the plaintiff contributed all the capital and both contributed their services, and that they shared the profits equally, and that the policy in suit was applied for by the plaintiff under an agreement between him and Levi Dillenberg, whereby the latter undertook to pay the premiums on the same, and that this agreement was made by said Dillenberg, because of an obligation which he agreed he was under to the plaintiff, growing out of the receipt, past or prospective, by Dillenberg of one-half of the partnership profits, and that said policy was taken out by the plaintiff in good faith and not for the purpose of speculating on said Dillenberg's life, then they will render a verdict for the plaintiff on the defendant's second plea.

Granted.

D. K. CARTTER,
Chief Justice.

Def't ex.

113 2. The records of the insane asylum produced here are evidence against the plaintiff in regard to the history of Levi Dillenberg before his admission to that asylum, only so far as the jury may find they were made up from the plaintiff's statements or the observation of the officers making the record.

Granted.

D. K. CARTTER,
Chief Justice.

3. If the jury find from the evidence that all the statements and answers contained in the application upon which the policy in suit was issued are substantially true, they will render a verdict for the plaintiff upon

the defendant's second amended pleas, and on this point the burden of proof is on the defendant.

Granted.

D. K. CARTTER,
Chief Justice.

4. Since the application upon which the policy in suit was is-
114 sued, there is no answer to the questions, "brother's dead; age, ; cause of death," it follows that there is no warranty in respect of the information called for by said questions.

Granted.

D. K. CARTTER,
Chief Justice.

Excepted to by def't.

5. If the jury find from the evidence that the witness Myers was authorized by the agents of the defendant to bring them insurance, he to share their commissions with them, and that said agents afterwards prepared the application in evidence, dated May 4th, 1869, and directed Myers to take it to the plaintiff and get it signed, and that Myers did not know the contents of said application, notwithstanding he told the plaintiff that it was a mere matter of form, and did not read the paper over to him, and that Luchs was ignorant of its contents when he signed it, and was not guilty of any fraud or concealment of material facts, and if the jury further find from the evidence the fact that Myers had solic-
115 ited this insurance under his said authority from the defendant's agents, and was to receive a share of their commission, and it was communicated to the defendant's directors when they had said application before them and before they had issued the policy in suit, and that they afterwards issued such policy without making any objection to said Myers' action in that regard, then the jury is instructed to find that the plaintiff is not bound by the statements made in that application.

Granted.

D. K. CARTTER,
Chief Justice.

Excepted to by def't.

To all of which prayers the defendant, by its counsel, then and there objected, but the court overruled the said objection, and granted the said prayers, and the said instructions were accordingly read to the jury notwithstanding said objection; to which ruling of the court the defendant, by its counsel, then and there excepted.

116 The defendant thereupon, by its counsel, asked the court to instruct the jury according to the following prayers, marked, respectively, A, B, C, D, E, and F, which prayers were accordingly granted, to wit:

A. The applicants for the insurance in this case were bound to answer, truly and correctly, all the inquiries made of them by the company in the printed interrogatories; and were bound to see to it that the questions were truthfully answered, notwithstanding the application may have been sent to

them or brought to them with the answers already written in the blanks left for that purpose.

Granted.

D. K. CARTTER,
Chief Justice.

Pl'ff ex.

B. If the jury shall find from the evidence that any one of the
117 declarations or statements contained in the application of May 4th, 1869, made by the plaintiff, is untrue, the policy of insurance is void, and the verdict must be for the defendant.

Granted.

C. If the jury shall find from the evidence that Bernhard Dillenberg, the brother of Levi Dillenberg, was at any time afflicted with consumption or other pulmonary disease, the verdict must be for the defendant.

Granted.

D. If the jury shall find from the evidence that Levi Dillenberg, the person whose life was insured, was afflicted with insanity prior to said insurance, the verdict must be for the defendant.

Granted.

118 E. The evidence in this cause does not show that the relation of agent and principal ever existed between the defendant and the witness Myers, and the company was not, therefore, bound by any acts done or statements made by said Myers, nor was the company then, or is it now, chargeable with any information which may have been communicated to said Myers by Dillenberg or Luchs or by any other person.

Granted.

F. If the jury find from the evidence that the witness Myers, in pursuance of a preconcerted arrangement between himself and Dillenberg and Luchs, went to the agents of the defendant and procured from them the application of May 4th, 1869, for the purpose of procuring the policy of insurance, and that he did procure it and take it to Luchs for his signature, then and in that case Myers was the agent of the plaintiffs and not of the insurance company, and the company cannot be held responsible
119 for any of his acts or statements.

Granted.

The defendant, by its counsel, thereupon further asked the court to instruct the jury according to the following prayers, numbered, respectively, 1, 2, 3, 4, 5, and 6, to wit:

Defendant's prayers rejected.

1. The plaintiff in his declaration and application for insurance having stated that he had an insurable interest in the life of Levi Dillenberg, to the full amount of ten thousand dollars, the jury must be satisfied from the evidence that Levi Dillenberg was at that time indebted to the plaintiff in that sum of money or the verdict must be given for the defendant.

Rejected.

D. K. CARTTER,
Chief Justice.

Excepted to by defendant.

120 2. The material inquiry propounded by the insurance company to the applicants for insurance relating to the number of brothers dead and the cause of death remaining unanswered in this application, but special reference in this application being made to the former application made by Levi Dillenberg to this company for insurance, the insurance company was authorized to refer to that application for information, and if the jury find from the evidence that the deceased brother, Bernhard Dillenberg, committed suicide, the answer in the first application giving the cause of death of the deceased brother was untrue, and, therefore, the defendant is entitled to the verdict.

Rejected.

D. K. CARTTER,
Chief Justice.

Excepted to by defendant.

3. If the jury shall find from the evidence that Bernhard Dillenberg, the brother of Levi Dillenberg, cut his throat prior to the application for insurance, your verdict must be for the defendant.

Rejected.

D. K. CARTTER,
Chief Justice.

121 4. The fact that a brother of the assured committed suicide was a material circumstance with which the directors of the company should have been made acquainted, and the general interrogatory put to the applicant, as to the cause of death of the members of the family, was appropriate and probably designed to elicit this precise sort of information, and to answer the inquiry untruthfully or to leave it wholly unanswered, was equally fatal to the policy, and if the jury shall find from the evidence that a brother of the person upon whose life the policy was issued had previously committed suicide your verdict must be for the defendant.

Rejected.

D. K. CARTTER,
Chief Justice.

Excepted to by defendant.

5. If the jury find from the evidence that the application in this case was made at the instance of Dillenberg, and without the knowledge and
122 consent of Luchs, and that the policy of insurance was delivered to Dillenberg, and that he paid the premium thereon for two years, then the verdict of the jury must be for the defendant. The plaintiff has no right to maintain this action.

Rejected and excepted to by def't.

6. If the jury shall find from the evidence that Bernhard Dillenberg, a brother of the person whose life was insured, committed suicide prior to the application by the plaintiff for this insurance, and that at the time the plaintiff made the application, declaration, and answers in this case he knew the fact of such suicide, the verdict must be for the defendant. The plaintiff was bound to inform the company of the cause of death of that brother, and the concealment of that fact, and with'olding such information, was a fraud upon the insurance company and renders the policy void.

Rejected & excepted to by defendant.

123 But the court refused to grant the said prayers, or any one of them, or to so instruct the jury, to which refusal the defendant, by its counsel, then and there duly excepted.

Thereupon, after the defendant's said prayers had been rejected, the plaintiff further prayed the court to grant to the plaintiff a further instruction to the jury, as follows, to wit:

6. If the jury shall find from the testimony that in the business relations of Luchs and Dillenberg Luchs had reason to believe, and did believe, that he had a ten thousand dollar interest in the preservation of Dillenberg's life, with reference to the present condition and future development of that business, the declaration made by him in the application for the policy of insurance is substantially proved, if he made the declaration in good faith, and did not undertake to speculate on the life of said Dillenberg.

Granted.

D. K. CARTER,
Chief Justice.

Excepted to by defendant.

124 Which prayer and instruction the court thereupon granted; to which opinion and instruction the defendant then and there excepted, and the said prayer was thereupon given and read to the jury.

All the exceptions above specified were taken at the time and noted upon the minutes of the court before the giving of the verdict, and the verdict of the jury was for the plaintiff for the full amount of the policy; and the counsel for the defendant thereupon presents this his bill of exception, containing the said opinions and directions, and requests the said chief justice, who presided at the trial of the said cause, to put his seal hereto, which is accordingly done (now for then) this 5th day of May, 1879.

D. K. CARTTER, *Ch'f Jus.* [SEAL.]

Proceedings before the supreme court of the District of Columbia in general term, commencing on Monday, the 5th day of January, 1880.

125 Present, Chief-Justice Cartter and Justices MacArthur and Cox.

FRIDAY, *January 16th*, 1880.

Session resumed, pursuant to adjournment. Present, Justices MacArthur, Hagner, and Cox.

LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, def't. } At law. No. 16471.

Argued by Mr. Totten for motion for new trial, and by Mr. Worthington, contra, without concluding, to be resumed Monday.

MONDAY, *January 19th*, 1880.

Session resumed, pursuant to adjournment. Present, Justices MacArthur, Hagner, and Cox.

LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company, def't. } At law. No. 16471.

Argument resumed. Mr. Worthington for plaintiff. Mr Tot-
126 ten to be heard in reply.

WEDNESDAY, *January 21st*, 1880.

Session resumed, pursuant to adjournment. Present, Justices MacArthur, Hagner, and Cox.

LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company, def't. } At law. No. 16471.

Argued by Mr. Totten in support of the motion for new trial upon exceptions, in conclusion, and submitted to court.

MONDAY, *January 26th*, 1880.

Session resumed, pursuant to adjournment. Present, Justices MacArthur, Hagner, and Cox.

LEOPOLD LUCHS, PLAINTIFF,
vs.
THE CONNECTICUT MUTUAL LIFE INSURANCE Company, def't. } At law. No. 16471.

And now again come here as well the plaintiff as the de-
127 fendant, by their respective attorneys; whereupon, because it appears to the court here that neither in the record and proceedings nor the judgment of the special term at law, is there any error, therefore it is considered that the judgment of the said special term aforesaid be, and the same is hereby, affirmed, with costs.

128 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court before you, between Leopold Luchs, plaintiff, and the Connecticut Mutual Life Insurance Company, defendant, a manifest error hath happened, to the great damage of the said Connecticut Life Insurance Company, as by its complaint appears; and it being fit that the error, if any hath happened, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf: Therefore, you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Wash-

ington on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the United States, this 24th day of February, in the year of our Lord 1880, and of the Independence of the United States the one hundred and fourth.

[SEAL.] R. J. MEIGS, *Clerk.*

DISTRICT OF COLUMBIA, *to wit:*

To LEOPOLD LUCHS:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein the Connecticut Mutual Life Insurance Company is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness D. K. Cartter, chief justice of the said supreme court of the District of Columbia.

D. K. CARTTER, *Ch'f Just.*

Service acknowledged March 6, 1880.

A. S. WORTHINGTON,
For Def't in Error.

(Indorsed:) 16471. At law. Leopold Luchs v. Conn. Mutual Life Insurance Co. Writ of error. Filed March 6, '80. R. J. M.

129 In the supreme court of the district of Columbia, the 27th day of Feb'y, 1880.

LEOPOLD LUCHS
vs.
THE CONNECTICUT MUTUAL LIFE INS. CO. } At law. No. 16471. In error.

Know all men by these presents that we, the Connecticut Mutual Life Insurance Company, Edward B. Watkinson & George S. Gilman, are bound unto the above-named Leopold Luchs in the sum of ten thousand dollars ($10,000) to be paid to the said Leopold Luchs, his executors or administrators, to which payment well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 27th day of February, 1880.

Whereas the above-named Connecticut Mutual Life Insurance Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-

named Connecticut Mutual Life Insurance Company shall prosecute its said writ of error to effect, and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE CONNECTICUT MUTUAL LIFE INS. CO. { SEAL OF COMPANY. }
By JOHN M. TAYLOR, *Sec'y.*
EDWARD B. WATKINSON. [SEAL.]
GEO. S. GILMAN. [SEAL.]

Sealed and delivered in the presence of—
NATHAN F. PECK.
W. J. HICKMOTH.

Approved this 6th day of March, A. D. 1880.

W. S. COX, *Justice.*

130 *Authentication of record.—Clerk's certificate.*

Clerk's office, supreme court of the District of Columbia.

I, Return J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 22d day of March, 1880.

[SEAL.]

R. J. MEIGS, *Clerk.*
By J. JAY CAMP,
Assistant Clerk.

Justice's certificate.

I, David K. Cartter chief justice of said court, do certify the foregoing attestation by Return J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 22d day of M'ch, 1880.

D. K. CARTTER, [SEAL.]
Chief Justice.

Clerk's certificate to justice's official character.

I, Return J. Meigs, clerk of said court, hereby certify that David K. Cartter, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 22d day of March, 1880.

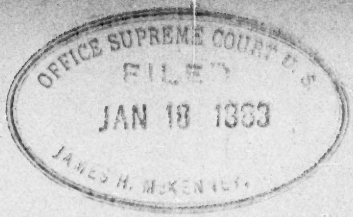
[SEAL.]

R. J. MEIGS, *Clerk,*
By J. JAY CAMP,
Assistant Clerk.

(Indorsement on cover:) No. 203. The Connecticut Mutual Life Insurance Company, plaintiff in error, vs. Leopold Luchs. Dist. of Columbia sup. court. Filed 29th March, 1880.

(Stamp:) Office Supreme Court U. S. Filed Mar. 29, 1880. D. W. Middleton, clerk.

108-498



IN THE

Supreme Court of the United States.

No. 203.—October Term, 1882.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Plaintiff in Error,

vs.

LEOPOLD LUCHS, Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

ENOCH TOTTEN,

For ~~Appellant~~ Pltff in Error.

J. L. Pearson, Printer, 9th and D sts., Washington.

106-498

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BRIEF FOR PLAINTIFF IN ERROR.

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For ~~Appellant~~ Plff in Error.

J. L. Pearson, Printer, 9th and D sts., Washington.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1882.

CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, *Plaintiff in Error*,
vs.
LEOPOLD LUCHS, *Defendant in Error*.

No. 203.

Brief for Plaintiff in Error.

This action was instituted in the Supreme Court of the District of Columbia, on a policy of insurance on the life of Levi Dillenberg for $5,000, and it resulted in a verdict and judgment in favor of the plaintiff below for the full amount claimed.

STATEMENT OF THE CASE.

On the 4th day of May, 1869, the plaintiff in the court below made an application to the defendant for a policy of insurance, in the sum of $10,000, on the life of Levi Dillenberg, who was a brother of the wife of Luchs. The application contained certain declarations and was accompanied by answers to interrogatories propounded to the applicant on the various subjects usual in such applications. Among other things, the paper contains the declaration that "I have not concealed, withheld, or misrep-

resented any material circumstance in relation to the past or present state of his health, habits of life, or condition, which may render an assurance on his life more than usually hazardous, or with which the directors of said company ought to be made acquainted."—(12.) It also states: "I do hereby declare that I have an interest in the life of the said Levi Dillenberg to the full amount of the said sum of *ten thousand dollars*." It is also stipulated in this application that if the statement and the answers therein "be not in *all respects true and correctly stated*, the said policy shall be void," and also that the policy shall not be binding until the premium shall be paid "in the life-time of the *assured*." This application is drawn in the first person, but it is signed by both Luchs and Dillenberg.

The policy bears date June 2d, 1869, (16,) and was countersigned and went into operation on the 3d day of July, 1869. The policy recites that, for the consideration of $125 paid "by Leopold Luchs," and of the annual premiums, it does "assure the life of Levi Dillenberg" in the amount of five thousand dollars. By the terms of the policy the company agreed "to and with the said *assured*, his executors, administrators, and assigns, well and truly to pay or cause to be paid, in the city of Hartford, the said sum *insured* to the said *assured*, his executors, administrators, or assigns, within ninety days," &c., &c. The policy contains a clause making the said declaration, answers, &c., warranties and part of the policy, and rendering it void in case they "shall be found *in any respect untrue*."

In October, 1866, the plaintiff was engaged in the tobacco business in Washington City, and on the eighth day of that month he and Levi Dillenberg formed a copartnership under the firm-name of Luchs & Co.; each partner agreed to contribute his services and an equal share of the stock in trade, the profits to be equally divided.—(8.) But it was well known by Luchs, and it was a part of the understanding at the time of the arrangement, that the capital of Dillenberg was then invested in mining stocks in

the West, and could not be "immediately realized." Luchs took the hazard of this indefinite realization and it seems that he lost; the cash *was never realized* so far as we know. The plaintiff had been carrying on the same business in a store on 8th street, and when the partnership agreement was made Dillenberg took his place in the establishment, an inventory being made of stock on hand. The plaintiff contributed to the firm, in cash, the sum of $1,161.24, and in stock, including his old stock on hand, the sum of $10,100.28, for all of which he was given credit on the books of the firm. The business was conducted on Eighth street for about one year and then the firm removed to Seventh street, near F; the business was continued by Luchs at the store on Eighth street also, which was in the management of Mrs. Luchs. Dillenberg devoted his services to the business, but failed to furnish any capital. Luchs becoming dissatisfied, on the 14th of August, 1868, they called in one Myers, who was the plaintiff's main witness in the case, to state an account of the partnership matters; he also stated an account of the business of the firm on the 1st of January, 1869, and on the 22d of September, 1869.

On the 10th of August, 1868, as appears from the account, (22,) the firm owed Luchs $4,656.77, and not more. As a means of adjusting the dispute, Myers, about or soon after the time of the first statement, (August, 1868,) as a means of settling the dispute, strangely enough, suggested that a policy of insurance be procured upon the life of Dillenberg for the benefit of the plaintiff, and it was then agreed by the parties that Dillenberg *should retire from the firm within about one year from that time.* But no agreement or understanding responsive to Myer's "suggestion" was ever reached by the parties.—(8–31.)

Accounts were opened and kept in the books of the firm with Luchs, which show a balance in his favor against the firm at the beginning of the copartnership, and until about the date of the application for the insurance in ques-

tion; on the date of the application the account shows a balance against him and in favor of the firm of $499.93 (18); at the date of the dissolution he was indebted to the firm in the sum of $1,164.06. It appears from the account of Dillenberg that he paid no money into the concern, except two small items of cash, and that he from time to time drew out small sums of money, and at the conclusion of the business he had received from the firm $4,500.89. The copartnership was dissolved in September, 1869, and on a settlement of the copartnership accounts at that date it was found that Dillenberg was entitled to $3,600, notwithstanding the fact that he furnished no capital at the beginning; this sum was soon afterwards paid to him by the plaintiff.—(30.) The plaintiff's expert witness testified that if the copartnership had been dissolved at the date of the application for the policy sued upon, there would have been due from the firm to Dillenberg about $3,000.—(32.) He was actually entitled, as the books show, to the sum of $4,197.65.

Luchs received credit in full for all the cash and goods by him contributed to the concern. He immediately began to draw out his money, and continued to draw until he had paid himself in full for all his advances, in cash and goods, and had consumed also a part of the profits which had accrued from the business.

The policy of insurance in question *was delivered to Levi Dillenberg*, and he paid the annual premiums on it for two years. Dillenberg kept the policy in his possession until a short time after the dissolution of the copartnership in September, 1869, when he was about to depart to the West, and he then handed it over to the plaintiff.—(31.)

The plaintiff himself swears (8) that he never heard anything about this policy until the dissolution of the copartnership had been consummated and he and Dillenberg had "settled off;" that Dillenberg then, when he was about to go west, came to him and said: "Now, Mr. Luchs, to show you that I mean to do what is right and fair and

square with you, there is an instrument. If I am away, no matter where I am, if a bill comes here to pay the premium on it, you pay it and let me know, and no matter where I am, I will refund you the money."

Dillenberg paid the premium on the policy for the second year, and this premium fell due by the terms of the policy (16) on the second day of June, 1870; in the autumn of 1870 he began to manifest symptoms of insanity, (44,) and became a madman in December, 1870.—(40.)

After the plaintiff received the custody of the policy from Dillenberg the latter paid no more premiums; he became insane and so remained until July 8th, 1876, (32,) when he died. The plaintiff paid the premiums falling due up to the time of the death of Dillenberg (32); no assignment of the policy was ever made by Dillenberg.

The witness Charles F. Myers was an insurance broker (11) at the time of the transactions mentioned in this case; the agent of the insurance company was A. H. Dillon, Esq., whose office and place of business was in Baltimore, and Dillon employed the firm of Lincoln & Willard to represent and aid him in the business in Washington. The firm of Lincoln & Willard had no correspondence with the company and no responsibility to it; they were responsible to Dillon only, and to him they had given a bond conditioned for the faithful discharge of their duties (42-3); the witness Myers on his re-examination testified that he received the application on which this policy was issued from Mr. Willard, of that firm, and that it was already filled up, and that Willard told him to take the paper and have it signed; that he did take it to the store of the firm and asked the plaintiff and Dillenberg to sign it, and at the same time told them it was "a mere matter of form," and that both of them signed the paper without reading it; that he (the witness) had never seen the paper before and did not read it. The defendant's evidence showed that this application was not in the handwriting of either Lincoln or Willard. The

witness Myers received part of the commission allowed by Dillon to Lincoln & Willard.—(43.)

The witness Myers prepared another application to the defendant for a policy for $5,000.00 in behalf of Dillenberg, dated February 17, 1869, (36, 42,) upon which a policy was issued by the defendant to Dillenberg for that amount; this policy lapsed in March, 1870, because the premium was not paid.

By the interrogatories connected with these applications a question is put to the applicant for insurance as to how many of his brothers were dead, and the cause of death; in the application dated May 4th, 1869, this question is unanswered (13), but in the application dated February 17, 1869, the same question is answered and the cause of death is stated to have been "accident."—(37.) Bernhard Dillenberg, a brother of Levi Dillenberg, on or about the 26th day of February, 1863, committed suicide in the city of Washington, in the house of the plaintiff, by cutting his throat with a razor when alone; nobody saw him commit the act, and at the time thereof he was sick and emaciated and had been sick for many months, and the plaintiff knew of these facts at the time of making the application of May 4, 1869. At the time the examining officer of the defendant examined the application of May 4, 1869, to determine whether or not a policy of insurance should be issued thereon, he discovered that the interrogatory addressed to the applicant as to the number of brothers dead and cause of death was left unanswered, and he thereupon referred to the other application of February 17, 1869, signed by Levi Dillenberg, and there ascertained that the cause assigned for the death of the said deceased brother was "accident," and, upon such examination and the evidence thereby disclosed, the policy above set forth was issued by the defendant.

The witness Myers knew at the date of the application of February 17, 1869, that the brother of Levi Dillenberg

had committed suicide.—(44.) The plaintiff himself told him of that fact as early as 1867.

The form of the declaration contains an inquiry as to whether or not any "brother" or other member of the family had "ever been afflicted with *insanity*, or with pulmonary, scrofulous, cancerous, or any other hereditary disease, and the answer given to each inquiry was "no." —(13.)

The application on which the present policy was issued bears date May 4, 1869; and the policy became operative on the 3d day of July, 1869; in the autumn of 1870, the assured, Levi Dillenberg, became insane, and was, on the 7th day of December, 1870, taken to and confined in the insane asylum in this city. The records of the asylum were produced at the trial, and they show (46) that Dillenberg's disease had then afflicted him "four or five years," and that he had been "better and worse for years;" and that "a brother, of supposed strong mind, had cut his throat when far gone in consumption." Dillenberg was discharged June 30, 1871; but was again confined on the 31st December, 1872, and remained there until his death. When he was returned in 1872, he was brought there by Luchs himself, and the record made then shows that the duration of his disease was "six years," that he was "suicidal at times" and was "maniacal."—(41.) This record was made up partly from the first record (made in 1879) and from what Luchs said. The first record shows that the patient had been afflicted for "four or five years;" the second confinement began about two years after the first.—(40, 41.)

Assignment of Errors.

1. The court below erred in the opinion that this action could be maintained by the plaintiff in his own name; in admitting the policy as evidence to the jury to support the averments in the declaration (1); in denying the motion of

the defendant's counsel to direct a verdict for the defendant (45), and in refusing the fifth prayer (48) asked for by the defendant's counsel.

2. The court erred in making the rulings on the question raised as to the insurable interest which the plaintiff had in Dillenberg's life:

This error involves the exception to the denial of the motion for a verdict for the defendant at the close of the evidence, the first prayer (No. 1) asked for by the defendant's counsel and refused (47), and the first (45) and last (49) prayers granted on the request of the plaintiff's counsel.

3. The court erred in granting the third (45) prayer and the last (49) prayer requested by the plaintiff's counsel.

4. The court erred in granting the fourth prayer of the plaintiff's counsel, and in refusing the prayer requested by the defendant's counsel, numbered 2, (47.)

5. The fifth prayer granted to the plaintiff's counsel is erroneous.

6. The third prayer granted to the plaintiff is inconsistent with the first (A) and second (B) prayers granted on the request of the counsel for the defendant, and the fifth prayer, granted on the request of the plaintiff, is contradictory to the fifth and sixth (E and F) prayers granted on the request of the counsel for the defendant.

7. The court erred in refusing the third, fourth and sixth prayers (48) requested by the counsel for the defendant.

Argument and Authorities.

First. The plaintiff cannot maintain this action in his own name, nor make a good acquittance for the money. The application was signed by both Luchs and Dillenberg; it contains a stipulation in these words: "I further agree that the assurance hereby proposed shall not be binding on

said company, and no policy shall attach until the amount of premuim, as stated therein, shall be paid to said company *in the lifetime* of said *assured*." The policy itself declares that in consideration of the premiums the defendant does "assure the life of Levi Dillenberg * * in the amount of five thousand dollars for the term of the whole continuance of his life," and also that the company does "promise and agree, to and with the said assured, his executors, administrators, and assigns, well and truly to pay, or cause to be paid, in the city of Hartford, the said sum *insured* to the said *assured*, his executors, administrators, or assigns."—(16.) The policy was delivered to Dillenberg and not to Luchs; it was retained in possession of Dillenberg for over a year, and the plaintiff knew nothing about it. Luchs paid no consideration. Dillenberg paid the first two annual premiums. Most of the essential elements of a contract seem to be lacking, so far as Luchs is concerned. There was no meeting of minds; there was no consideration paid by Luchs, and there was no delivery to him of the policy, and he really knew nothing about it until several months had elapsed.—(9 and 10.) These facts and the language of the policy make it quite clear that an action on this policy can be maintained under any circumstances, the most favorable to Luchs, only in the name of the adminstrator of Dillenberg.—(Hollis vs. Richardson, 13 Grey, 392; Burroughs vs. Assurance Co., 97 Mass., 359; Gould vs. Emerson, 99 Mass., 154; Campbell vs. New Eng. Ins. Co., 98 Mass., 381; Bailey vs. Ins. Co., 114 Mass., 177; Exchange Bank vs. Rice, 107 Mass., 37.)

In certain New York City reports one or two cases may be found which sustain the right of action in the name of the person beneficially interested, but in that state the statutes positively require that all actions shall be brought in the name of the *real party interested*. The distinction attempted to be drawn in the cases above referred to between the words *assured* and *insured* cannot be supported by reason or on authority. The word *assured*, as

used in the application (12) seems to relate plainly to Dillenberg, and the application being a part of the policy serves to determine the question as to which person the word refers. In the case of Bailey vs. New Eng. Mu. L. Ins. Co., before cited, the obligatory clause of the policy contained language undistinguishable from that which we have here; it was as follows: "And the said company do hereby promise to and agree with the said *assured*, his executors, administrators, and assigns, well and truly to pay the said sum *insured* to the said *assured*, his executors, administrators, or assigns, sixty days after due notice and proof of the death of the said *assured*, during the continuation of and before the termination of this policy. For the benefit of his widow, if any." Suppose letters of administration on the estate of Dillenberg had been issued to one of his creditors, this administrator certainly would have been entitled to demand and receive the money on this policy as against Luchs, and he only could have given a valid receipt and discharge to the company. If Dillenberg's estate had turned out insolvent, with many large creditors, would Luchs, being a creditor of the estate, have been entitled to preference over the other creditors, as to the money produced by this policy, by reason of any of the circumstances connected with it?

Second. If the policy in this case was taken out by Luchs on the life of Dillenberg, for the benefit of the former, it was a wager policy, and is void, because at the date of the application he did not have an interest in the life of Dillenberg to the extent of *ten thousand dollars;* he had no insurable interest whatsoever in Dillenberg's life; on the contrary, he was actually indebted to Dillenberg; there is no pretence here that there was any interest held by Luchs, unless it existed by reason of the co-partnership business; and the testimony of the plaintiff's own expert witness, corroborated by his own books of account, establish the fact beyond controversy that at the

date of the application for the insurance the firm was indebted to Dillenberg to the extent of over $4,000.00.

It is susceptible of almost absolute mathematical demonstration on the facts in the case that Dillenberg did not on the 4th of May, 1869, owe either Luchs or the firm one dollar. We will assume, for the purpose of the following computation, that it is true that the partners were to contribute equally to the partnership capital, as insisted by the plaintiff. Dillenberg's capital was all invested in mining stocks on the Pacific Coast, and it was the understanding that he could not "immediately" furnish anything in the way of cash capital, and, therefore, that Luchs should provide all the capital for the firm at the outset and take the risk of Dillenberg's recovery of his funds. In pursuance of this agreement Luchs contributed a stock of goods valued at $10,100.28 and in cash $1,161.24, making a total of $11,261.52. As to this amount he must be, and he actually was, treated as a partner making advances to his firm, for which the firm was indebted to him. If he had not immediately begun to draw out his money, and had not continued to draw out his money until he had reimbursed himself for the whole amount advanced, he would have been entitled, on a settlement of the copartnership business, to repayment of the amount advanced, with six per centum interest, precisely as if he had taken the firm's note for $11,261.52 payable in two and two-thirds ($2\frac{2}{3}$) years, with interest. As the fact was, the most he was entitled to demand was that "rests" in his account should be made, and that he should have interest computed on the various balances so ascertained.

The application for this policy bears date on the 4th day of May, 1869. By taking the account of Luchs from the beginning of 1869, we may readily determine the exact financial relations he sustained to the firm on that day. For convenience, that account is transferred from pages 22 and 23 of the record :

L. Luchs.

1869.		Dr.			1869.		Cr.		
Jany.	7.	To cash	116	40 00	Jany.	1.	By balance per stock acct	.....	2,377 45
	9.	" "	"	108 00	Jany.	14.	By cash	120	40 00
	20.	" "	124	50 00		19.	" "	124	65 00
	21.	" "	126	650 00	Feb.	15.	" "	143	50 00
	29.	" "	132	1 00	March	"	" "	167	35 00
Feb.	1.	" "	134	50 00		18.	" "	170	42 68
	2.	" "	136	50		22.	" "	173	35 00
	18.	" "	145	11 75	Apl.	1.	" "	179	75 00
	20.	" "	147	35		30.	" "	199	75 00
	"	" "	148	15 00			By balance	.....	499 93
	25.	" "	151	1 35					
March	9.	" "	158	450 00					
	10.	" "	162	120 00					
	13.	" "	165	2 75					
	17.	" "	168	575 36					
	"	" "	169	75 00					
	18.	" "	"	1 50					
	"	" "	170	68 75					
	19.	" "	170	2 00					
	"	" "	171	1 00					
	20.	" "	"	300 00					
	22.	" "	172	50 00					
	25.	" "	175	65 00					
Apl.	6.	" "	183	13 75					
	12.	" "	187	7 00					
	21.	" "	192	75 00					
	23.	" "	194	540 00					
				$3,295 06					$3,295 06
May	4.	To balance	.....	$499 93					

It is a significant fact that in the settlement between the partners nothing was said about interest on Luchs' advances and none was computed. But for the purposes of this argument we may compute interest on the amount without reference to "rests," and for the whole time. Interest at six per centum on $11,261.52 for two years and two-thirds of a year amounts to $1,801.84; from this sum deduct the balance against him on the account May 4, 1869—$499.93—and we have a balance in his favor and against the firm at that date of $1,301.91. The books show a balance against Dillenberg, in favor of the firm, on May 4, 1869, of $3,799.74, for cash drawn by him from time to time during the whole period.

We have no way of ascertaining with exactness what were the assets and liabilities of the firm on the 4th day of May; this is the only item in this computation which lacks perfect accuracy. But we have an inventory of January 1, 1869, (29) and one of September 22, 1869, either of which is sufficient for the present purpose. I take the inventory, &c., of January 1, 1869, because it is about a month nearer in time.

Taking the above figures and the statement of assets, &c., of January 1, 1869, the settlement would stand thus:

Outstanding accounts due firm		$1,656 88
Cash in bank		1,038 73
Cash on hand		633 80
Goods in store		10,326 96
		$13,656 37
Debts due from firm		1,959 28
Total assets		$11,697 09
There is due Luchs from firm	$1,301 91	
There is due Luchs from Dillenberg one-half of the whole amount due from D. to the firm May 4, 1869	1,899 87	
		3,201 78
Total partnership property to be equally divided between the two partners—being $4,197.65 each		$8,395 31

If we take as the basis of the computation, the inventory of September 22, 1869, the share of each partner will amount to $3,357.89.

Had the computation of interest been made on "rests" the interest would have amounted to but little over half as much.

In addition to this exhibit from the books of account of the firm, we have the declaration of the expert that if the business had been settled at this time, (May 4,) Dillenberg's share would have been about $3,000; and we have also the still stronger evidence that on the 22d of September, 1869, Luchs actually paid Dillenberg $3,600 for his interest. He can hardly be heard now to say, that instead of owing Dillenberg that Dillenberg owed him.

A valid insurance cannot be effected by one man upon the life of another unless there is an indebtedness existing in favor of the person who takes out the policy, or the eqivalent, and the indebtedness must be in proportion to the amount of the insurance.—(Cammack vs. Lewis.) The prayer of the defendant's counsel which was first rejected (47) should have been granted, and the motion for a verdict for the defendant should have been granted also. In the application the plaintiff declared that he had "an interest in the life of the said Levi Dillenberg *to the full amount of the said sum of ten thousand dollars.*" If this statement was not in all respects true, the defendant was entitled to the verdict. If the insurable interest was only nine thousand and nine hundred dollars, the plaintiff cannot recover. Absolute verity in all the statements is required by the terms of the agreement. It is impossible to reconcile this declaration with the testimony; the business had been going on from the fall of 1866, and some time before the application was made for this policy, it was agreed that Dillenberg should retire from the firm within a year (31), and at the date of the application the firm owed Dillenberg over $4,000. The

benefits of Dillenberg's skill and energy could have been available to the firm, under this agreement, for only one year at most; the plaintiff himself introduced evidence to show that Dillenberg's services were not worth more than $2,700 per year.—(10.) From this view of the case it was impossible for anybody to "believe" that Luchs had an interest to the extent of *ten thousand dollars* "in the preservation of Dillenberg's life, with reference to the present condition or future developments of the business" of the firm.—(See last instruction, 49.)

The question as to what constitutes an insurable interest in the life of a stranger is one which has been much discussed by the courts, but there is no judicial decision which declares that a partner has an insurable interest in the life of his copartner solely by virtue of that relation. The rule supported by the greatest authority is that there must be some well-founded or reasonable expectation of a *pecuniary* advantage to be derived from the continuance of the life.

It has been held that the near relationship of father and son does not constitute an insurable interest in the son on the father's life, unless the son has a well-founded or reasonable expectation of some pecuniary advantage to be derived from the continuance of the life of the father.—(See, also, Guardian L. Ins. Co. vs. Hogan, 80 Ill., 45; May on Ins., sec. 107. See, also, Cammack vs. Lewis, 15 Wall., 643; Ins. Co. vs. Sturgis, 18 Kansas, 93; Stevens vs. Warren, 101 Mass., 564; Reese vs. Mu. Ben. L. Ins. Co., 23 N. Y., 516; May on Ins., 398; Warnock vs. Davis, 104 U. S., 775.) In Lewis vs. Phœnix L. Ins. Co. (39 Conn., 104) it was held that the mere relationship of brother, without more, is not sufficient to support a life insurance policy.

In a case recently decided in this court (Warnock vs. Davis) the following was said in reference to this subject:

"It may not be easy to define with precision what will in all cases constitute an insurable interest, so as take the contract out of the class of wager policies. It may be stated generally, however, to be such an interest arising

from the relations of the party obtaining the insurance, either as *creditor* of, or *surety* for, the assured, or from the *ties of blood* and *marriage* to him, as will justify a reasonable expectation of advantage or benefit from the continuance of his life."

The averment in the declaration (1) is that "the plaintiff had an insurable interest to the amount of over five thousand dollars in the life of one Levi Dillenberg," and this averment is specifically denied. There was no attempt made to prove this averment except inferentially by reference to the partnership relation. The presence of an insurable interest must be proven by the plaintiff in such a case precisely as any other essential fact.—(Reese vs. Ins. Co., 23 N. Y., 516.) The case proceeded in the trial court on the theory or assumption that it was not necessary to prove an insurable interest exceeding $5,000.00, notwithstanding the fact that the declaration contains the assertion that Luchs had then an insurable interest in the life of Dillenberg "*in the full amount of the said sum of ten thousand dollars.*"

It has been and doubtless will again be argued that Dillenberg must be charged with his share of the capital stock. This view cannot affect the question; if Dillenberg had paid in his share of the capital he would have had just so much more to draw out, and Luchs would have had just so much less. Luchs had no capital in the firm business after May 1st, 1869, unless we credit him without interest. It would be a novel system of accounting which would require Dillenberg to put into the firm, or to be charged against him, one-half of the original capital stock only to be divided with his partner, who had no capital whatever in the business. Dillenberg did not in any way violate his agreement with his partner; his money was invested with no immediate prospect of getting it released, and probably with some chance of being wholly lost; this chance Luchs took, and at all events, the time when Dillenberg was to furnish the money was uncertain and

undetermined, which would have been held to mean a *reasonable time;* Luchs began to complain early in August, 1868, about ten months after the partnership had been formed. Was ten months an unreasonable time within which to develop a mine? But this subject soon became unimportant, because the business was successful, and at the end of the first year Luchs had been paid about one-third of his money, and in a short time he received the whole.

The instruction (No. 1) granted by the trial court at the request of the plaintiff's counsel is complained of because it authorizes the jury to substitute for the question of absolute *truth*, a question of "good faith" and speculative "purpose." The instruction is based upon an alleged agreement between Dillenberg and Luchs to the effect that the latter should make the application for the policy because of some undefined obligation "growing out of the receipt, past or prospective, by Dillenberg of one-half of the partnership profits." After all the prayers submitted by counsel on either side had been disposed of, at the plaintiff's request a final instruction was given the jury which is complained of as being wholly wrong; by it the jury was told that if they were satisfied that Luchs, in these "business relations" . . . "had reason to believe and did believe that he had a ten thousand dollar interest" in the life of Dillenberg, with reference to the "present condition" or "future developments" of the business, the declaration as to the insurable interest "was substantially proven," provided such declaration was made in "good faith," and "not for the purpose of speculating on the life of Dillenberg."

There was no proof of any such agreement between Luchs and Dillenberg as is mentioned in the first prayer; the proof goes only to the extent that Myers "suggested" that a policy be taken out on Dillenberg's life, but Luchs himself says he "did not make an answer to it," and that he "did not think of it," and "did not know what

his object was at the time." He also says he "never heard anything about a policy" until the settlement had been made. (See all on this subject on pp. 8, 9, and 10.) It will hardly be contended that the consent of the party whose life is insured will give it any additional validity.

The question was not one of "good faith," but was whether the declarations of Luchs contained in the application for the insurance were or not "*in all respects true*," and were "*correctly stated*," and particularly whether the statement therein, that he had an interest in Dillenberg's life "to the *full amount* of ten thousand dollars," was or not "*in all respects true*."

As to that part of the last instruction which submits to the jury as a material subject of inquiry the belief, and reasons for belief in the mind of the applicant, the objection may be well taken that there was no proof upon which such a prayer could be based. Whatever object Luchs had in view he didn't have any belief on this subject relative to the policy, because he knew nothing about it or about the declarations in the application; this he signed, as he says, without having first read it. And further, as is more fully stated hereafter, it was wholly immaterial what the reasons were which induced any belief on the subject, or whether or not he had any.

The first prayer refused to the defendant's counsel on the trial is based on the idea that as between strangers nothing but a debt or the equivalent can constitute a legal basis for life insurance, and that in this case neither the (then) present condition of the partnership business nor its prospective developments could afford any basis whatsoever for the insurance, be it ever so small, and that in neither view of the business could support an insurance for the large sum of $10,000.00. The "present condition" of the business certainly afforded no ground for such insurance, because Dillenberg had over $4,000.00 to his credit on the books of the firm over all charges. The "future developments" served the purpose in no better way, be-

cause by the agreement, made about that time, Dillenberg was to retire within the space of one year; to say that he might have become Luchs' debtor for $10,000.00 within that period would hardly be deemed sufficient to rescue this from the charge of being "a wagering policy." It is submitted that in this case nothing save proof of an indebtedness of the "full amount" of ten thousand dollars could warrant and support a verdict for the plaintiff.

Third. By the third instruction granted upon the prayer of the counsel for the plaintiff (45), the court adopted the doctrine that if the statements and answers were "substantially true" it was sufficient; and by the last one, that if Luchs "had reason to believe and did believe" that his statements as to his insurable interest were true, the declarations in his application were substantially proved." These instructions were contrary to the stipulations of the agreement. The application and declaration contain the following emphatic and positive provisions, to wit: "That the following answers and statements are *correct and true*, in which I have not concealed, withheld, or misrepresented any material circumstance in relation to the past or present state of his health, habits of life, or condition, which may render an assurance on his life more than usually hazardous, or with which the directors of said company ought to be made acquainted."

"And I do hereby declare that I have an interest in the life of the said Levi Dillenberg to the full amount of the said sum of ten thousand dollars."

And further on the following: "And I do hereby agree that the answers given to the following questions, and the accompanying statements, and this declaration, shall be the basis and form a part of the contract or policy between me and the said company; and that if the same be not in *all respects true and correctly stated*, the said policy shall be void, and all moneys which may have been paid on account thereof, and all dividend credits which may accrue therefrom, shall be forfeited to said company."

The policy itself is in language no less unmistakable; it contains this stipulation:

"And it is also understood and agreed to be the true intent and meaning hereof, that if the proposal, answers, and declaration made by the said Leopold Luchs, and bearing date the fourth day of May, 1869, and which are hereby made part and parcel of this policy, as fully as if herein recited, and upon the faith and warranty of which this agreement is made, shall be found *in any respect untrue*, then and in such case this policy shall be null and void."

In view of the emphatic expressions of opinion by this court, it will be necessary only to invite the attention of the court to the language of the last prayer; the court there tells the jury that if Luchs "had reason to believe, and did believe," his statement was true, it was sufficient; or in other words, the court told the jury that it was immaterial whether the statements were in all respects true or not. According to the contract it was entirely immaterial whether the plaintiff *believed* one thing or another, or whether *he had reason to believe* one thing or another; he stipulated that his statements and answers should be "in all respects true;" if any one of them was not true, or if any one of them was in any respect untrue, the policy was void. The language of the contract under discussion leaves no room for variation; the statements and answers must be not only in all respects true, whether material or immaterial, but in addition they must be correctly stated. To say that it is sufficient if the statements, declarations, and answers are "substantially" true, as the court did, was leaving it to the jury to decide between the material or essential parts of the statements and answers and those which might, in their opinion, be immaterial and unimportant. (See Jeffries vs. Ins. Co., 22 Wall, 47; Holabird vs. Ins. Co., 2 Dill, 168.)

The additional objection is taken to the third prayer (45) granted on the request of the plaintiff's counsel, that by it the court cast upon the defendant the burthen of proving, amongst other things, that the statement made by

Luchs that he did have an insurable interest in the life of Dillenberg to the full amount of $10,000 was not "substantially true." The declaration contains the averment that "the plaintiff had an insurable interest to the amount of over five thousand dollars in the life of Levi Dillenberg," and this allegation is denied in the second plea, and in the second amended plea it is averred, amongst other defences, that the above statement was untrue. The court instructed the jury that the burthen of proof was on the defence to show "that all the statements and answers contained in the application" . . . were not "*substantially true;*" otherwise the verdict must be for the plaintiff, on the basis of the amended pleas. Now, this second amended plea is only an amplification of the other pleas, and embraces all the defences in the case and are generally covered by the second and third of the original pleas. If the burthen of proof rested on the defendant, then there is no foundation for the rule that the fact of the existence of an insurable interest must be proved, (Reese vs. Ins. Co., 23 N. Y.,) and the presumption of law must have been in favor of the plaintiff as to all these defences, whether in one plea or in many.

Fourth. The court instructed the jury, in pursuance of a prayer (46) of the plaintiff's counsel, that "since in the application upon which the policy in suit is issued, there is no answer to the questions, 'Brothers dead; age; cause of death,' it follows that there is no warranty in respect of the information called for by said questions." The court in this connection denied the prayer (48) of defendant's counsel as to the right of the company to refer to and rely upon the former application to which its attention had been specially invited by the applicant in this case. This was error.

For some purpose, inferable only from the extraordinary circumstances and evidence disclosed in this case, Dillenberg, with the help of Myers, procured a policy on his own

life for $5,000 from this company on an application dated only about *three months* before this application, and written by Myers; in the first application the same interrogatory about the number of brothers dead and the cause of death, is put to Dillenberg, and he answers that one of his brothers is dead and that the cause of his death was "accident." (37.) This answer Myers knew to be false at the time he wrote the application. In the last application this question remains unanswered, but the former application is twice referred to in the latter.—(13.) The defendant proved at the trial that when the examining officer of the company noticed the omission he referred to the former application, and there found it stated that the cause of death of the brother was "accident;" upon this information the present policy was issued.—(39.) The officers of the company had a right to presume that the information on this point was truly given in the former application in any case, and especially in view of the fact that they were twice referred to it for information.

The reference in this application to the "former application" for information, makes that application a part of this one, and a false answer in that will be as fatal as if in this.—(Rawle vs. Am. Mu. L. Ins. Co., 27 N. Y., 294; Bliss on Life Ins., p. 78, 609, § 394 and § 57; Hawkins vs. U. S., 94 U. S., 694; Clark vs. Manuf. Ins. Co., 2 W. & M., 483; Harvey vs. The U. S., 104 U. S.)

At this point the attention of the court is invited to the peculiar line of policy adopted by the persons engaged in this transaction. Myers swears, and Luchs corroborates him, that this policy was taken out by Dillenberg by way of compensation, or security, or indemnity to Luchs in reference to the business matters of the firm. But Dillenberg does not owe the firm anything; on the contrary, the firm owes him $4,197.65. Why was the policy of Feb. 17, 1869, taken out, and was it taken out in reference to the dissatisfaction of August, 1868, and in pursuance of the alleged

suggestion then made by Myers? Why did they permit that policy to lapse at the end of the first year by neglecting to pay the premium? Why did they desire that this man, who was unmarried, and with neither father, mother, sister, nor child to support, should carry fifteen thousand dollars in insurance on his life? They knew the first policy could be avoided by this false answer. Myers, who was an insurance broker, knew this, and probably supposed that if the same question was left unanswered in the last application, the company would be likely to overlook it because of the answer in the former application. He knew also of the previous case of insanity and suicide in the family, and probably observed the symptoms of insanity in Dillenberg when this policy was taken out. Dillenberg was taken to the hospital for the insane on the 7th of December, 1870, and the policy was issued June 2, 1869; he died July 8, 1876, of this disease. There is another circumstance in connection with this view of the case; the plaintiff gave evidence to show that, about the time this policy was applied for, it was agreed that Dillenberg should retire from the partnership *within a year*, but in fact he was paid off and actually retired in about *four months*. How can this be explained unless we conclude that his mind became so much disturbed as to render him incapable of attending to the business?

Fifth. The fifth prayer granted to the plaintiff's counsel is erroneous because it assumes that Myers was the agent of the company, and that his acts bind the company. The proof on this point is that Dillon, of Baltimore, was the only agent of the company, and that he employed Lincoln & Willard to attend to the businecs for him in Washington. The firm of L. & W. certainly possessed no power to employ an agent for the company, certainly not an agent to perpetrate a fraud on the company.—(Bliss on Ins., 504, § 310; Ryan vs. Ins. Co., 41 Conn., 141.) The endorsement on the policy notifies the holder that—

"Agents are not authorized to make, alter, or discharge contracts, waive forfeiture or payments of premiums, name an extra rate for special risks, *or bind the company in any way;* their duties being simply the reception and transmission of applications for policies, and to deliver the same when issued under the rules and instructions of the company, and collecting the premiums therefor. In writing the application and transmitting it to the company, they act as the agents of the applicant only."

In addition to this, it will not be forgotten that Myers was the agent of Luchs & Co. at the time, and was paid by them for his services about this business.—(See Bliss on Ins., p. 462, and §§ 294, '5, and '6; Mockey vs. Mutual Benefit L. Ins. Co., 103 Mass., 78.)

Sixth. On a comparison of the third prayer granted to the plaintiff, it will be found that it is contradictory of the first (A) and second (B) prayers granted to the defendant, and that the fifth prayer granted to the plaintiff is inconsistent with the fifth (E) and sixth (F) prayers granted to the defendant. To grant prayers in the same case to the opposite parties, which are inconsistent and contradictory, is error.—(B. & O. R. R. vs. Blocker, 27 Md., 277.)

Seventh. The plaintiff was bound to inform the company of the fact that a brother of the assured had cut his own throat, and the court committed an error in refusing to so instruct the jury.

The fact of the suicide was well known to Luchs, as well as to Myers, and the suicide was an important if not a controlling fact; that fact alone, unless clearly traceable to accidental causes, would deter any company from issuing a policy. The concealment of so material a circumstance was a gross fraud upon the company.—(Bliss on Ins., § 56, p. 77, and authorities there cited. See Campbell vs. New Eng. Mu. Life Ins. Co., 98 Mass., 381.) The materiality is a question for the court and not for the jury, because

the cause of the death of the brother was specially inquired about.—(See case of Jeffries vs. Life Ins. Co., 22 Wall., 47; Miles vs. Conn. Mutual Life Ins. Co., 3 Gray, 580.)

"It is the duty of the insured to disclose all material facts within his knowledge. Although specific questions applicable to all men are proposed by the insurers, yet there may be particular circumstances affecting the individual to be insured which are not likely to be known to the insurers; and the concealment of a material fact, when a general question is put by the insurers, at the time of effecting the policy, which would elicit that fact, will vitiate the policy. An untrue allegation of a material fact, or a concealment of a material fact, will avoid the policy, though such allegation or concealment be the result of accident or negligence and not of design."—(Vose vs. The Eagle Life and Health Insurance Co., 6 Cush., 42; Bliss on Life Ins., 97; Lindeman vs. Desborough, 8 B. & C., 586; Smith vs. Ins. Co., 49 N. Y., 211; Hartman vs. Keystone L. Ins. Co., 21 Pa. St., 466.)

It is therefore submitted that the judgment should be reversed.

ENOCH TOTTEN,

For ~~Appellant~~.

Plff in Error

108-498

IN THE

Supreme Court of the United States

OCTOBER TERM, 1882.

No. 203.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, Plaintiff in Error,

vs.

LEOPOLD LUCHS, Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

A. S. WORTHINGTON,
Attorney for Luchs.

THOMAS McGILL & CO., PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

October Term, 1882.—No. 203.

THE CONNECTICUT MUTUAL LIFE INSURANCE COMPANY, PLAINTIFF IN ERROR,

vs.

LEOPOLD LUCHS, DEFENDANT IN ERROR.

BRIEF FOR LEOPOLD LUCHS, DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

In October, 1866, Leopold Luchs, the defendant in error, by verbal contract entered into partnership with his wife's brother, Levi Dillenberg, in Washington City, to carry on the business of buying and selling tobacco. Each of the partners was to contribute his services and one-half of the capital, and the profits were to be divided equally between them. It was, however, understood that, owing to Dillenberg's money being invested in mining stocks, "he could not immediately realize therefrom," and Luchs accordingly furnished the entire capital of over $10,000 with which the concern began business, (8.) So far as the record discloses, the only understanding between the partners as to how long a period should be allowed Dillenberg to raise his half of the capital, is that implied from Luchs's knowledge that he could not do it "immediately."

The business was carried on for nearly three years. Dillenberg never contributed any part of the capital stock. In August, 1868, twenty-two months after the firm began business, (not ten months, as stated on page 17 of brief of counsel on the other side,) dissatisfaction existed between the partners in consequence of Dillenberg's failure to comply with his agreement to put in half the capital, (8.)

At this time the store occupied by the firm was near the corner of Seventh and F streets northwest, in Washington, (8.) In the building on that corner was the office of one Marble, the agent of the insurance company which is the plaintiff in error here. Adjoining Marble's office on the same floor was the office of Lincoln & Willard, who became the agents of the company before the policy in suit was issued. Across the hall from the room occupied by Lincoln & Willard was the office of Charles F. Myers, an insurance solicitor. Marble, prior to August, 1868, had employed Myers to canvass for him, and had agreed to divide commissions with him on business brought him by Myers. This arrangement as to the policy in suit was acceded to by Lincoln & Willard when they succeeded Marble; but it is not shown to have been known to the company until it received the letter written to it by Myers hereafter mentioned, (42, 43, 31.) It is not shown to have been known to Luchs or Dillenberg at all.

Early in August, 1868, Luchs and Dillenberg called in Myers (who seems to have been an accountant) to examine the books of the firm and ascertain the condition of the business, which he did. Myers thereupon suggested, "as a means of adjusting the dispute or misunderstanding between the partners," that a policy of insurance should be taken out on Dillenberg's life for the benefit of Luchs, (8.) Luchs testified that he did not know what was Myers's object at the time, and did not hear anything about a policy until several months after it was issued, (9.) Myers, however, testified that he "told Mr. Luchs what was pro-

posed to be done, and had several conversations with him in regard to it," (9, 10.) All agree that Luchs and Dillenberg signed the application dated May 4, 1869, upon which the policy was issued, (8, 9, 43, 12.) After the company received the application it wrote to Marble requesting information as to the cause which induced Luchs to insure Dillenberg's life, (31.) Myers, on the 21st of May, 1869, answered the letter, giving a substantially correct account of the transaction and of his connection with it, except that he said that Dillenberg, having refused to pay the premiums, he, Myers, had persuaded Luchs to insure Dillenberg at his own risk, (31.) The policy was issued June 2, 1869, and on the 3d of July, 1869, was delivered to Dillenberg, who paid the first premium, (17, 31.)

About the time it was determined to procure this policy, it was agreed that Dillenberg should retire from the firm within about one year from that date, (31.) He did retire in September, 1869, (32.)

Between the time Myers was called in and the dissolution, he made several statements of account for the firm. These statements were made up in part from the accounts of Dillenberg and Luchs contained in the firm books, (19 to 28.) When the entries in these last mentioned accounts were made, or by whom, does not clearly appear. Counsel for the company assumes that the entries were made at the time they bear date. It is just as consistent with the evidence to assume that they were made from memoranda kept by the partners by Myers after he was called in, and after the partners had agreed to settle their controversy by having Dillenberg's life insured.

A final statement of account was made by Myers September 22, 1869, when Dillenberg retired, (30.) Dillenberg had contributed only his services to the firm during the three years of its existence. Those services were worth from $2,500 to $2,700, (10.) The profits amounted to $16,582.60, one-half of which—$8,291.30—was

credited to Dillenberg, (10, 11, 31,) so that he received from $5,591.30 to $5,791.30 more than he had earned. Dillenberg drew money from time to time during the firm's existence; but, allowing him one-half the profits, there was still due him $3,600 when he retired, (30.) Luchs accordingly gave him six notes, dated September 1, 1869, for $600 each, payable in from three to eleven months, (30.) At the same time Dillenberg handed to Luchs this policy, told him to pay the premiums as they fell due, and promised that he, Dillenberg, would refund the money, (9, 32.) The second premium fell due in July, 1870, and was paid by Dillenberg, (31.) The six notes for $600 each, given by Luchs to Dillenberg, were all paid at or before maturity, (32.) In the autumn of 1870 Dillenberg became insane, by reason, probably, of exposure to the sun in the preceding summer, (44.) In December of that year he was taken to the St. Elizabeth Hospital for the Insane, Max Luchs, a brother of Leopold's, accompanying him, (41, 44.) He was discharged in June, 1871, (41,) but re-admitted in December, 1872, (41,) Leopold Luchs going with him on this latter occasion, (41.) He remained in the asylum till May 8, 1876, when he died, (32.) All the premiums were duly paid by the defendant in error except the first and second, which were paid by Dillenberg himself, (32, 44, 45.) Notice of the death, together with proper proofs, was duly served on the company May 26, 1876, (32.) This suit was brought in September following.

At the trial evidence was adduced by the defence tending to prove that Bernhard Dillenberg, a brother of Levi, had committed suicide in 1863, and that Luchs knew it, (39.) Whether or not this alleged fact was known to the company or its agents, Lincoln & Willard, when the policy was issued, does not appear. It is assumed in the brief on the other side that it was not. There was evidence tending to show that it was known to Myers, (44.)

The questions raised here on these facts and the rulings of the Court below thereon, are:

I. Has Luchs the right to sue in his own name on this policy? In various forms this question is raised by the first assignment of error.

II. Is the policy invalid for want of insurable interest in Luchs? The second assignment of error brings up this question also in several forms.

III. Was there any breach of the warranty of the truth of the application? Several questions, as to the correctness of the rulings of the Court below at the trial upon the law of warranty, are raised by the third, fourth, and fifth assignments of error. For convenience, and to avoid repetition, they will be considered together in this brief.

IV. Was the case given to the jury on inconsistent or contradictory rulings? See the sixth assignment of error.

V. Was the policy avoided by the alleged failure to inform the company of the supposed suicide? The refusal of the Court to grant either of three instructions, in each of which it was assumed that the suicide was a material fact, and that it was not communicated to the company, forms the basis of the last assignment of error.

ARGUMENT.

I.

As to the Right of Luchs to Sue on the Policy.

The parol evidence in the case leaves no room to doubt that it was the intention of both Luchs and Dillenberg that this policy should be taken out in the name of Luchs, (8 to 11.) The written evidence makes it equally clear that they accomplished that purpose.

The application begins:

"I, Leopold Luchs, being desirous of effecting an assurance upon the life of Levi Dillenberg," (12.)

The first question in the application is as to the person for whose benefit the assurance is proposed, and is answered, "Leopold Luchs." And Luchs is required to state that he has an insurable interest in Dillenberg's life, (12.)

The policy is equally explicit. (16.) Omitting words not essential in this connection, it reads:

"This policy witnesseth that the Connecticut Mutual Life Insurance Company, in consideration of the declarations and representations made to them in the application for this insurance and the sum of $125 to them in hand paid *by Leopold Luchs*, * * * do assure the life of Levi Dillenberg." * * *

"And the said company do hereby promise * * the said assured * * to pay * * said sum insured to the said assured, his executors, administrators and assigns, within ninety days after due notice and proof of the death of the said Levi Dillenberg." * * *

"It is * * the meaning of this policy, and the same is accepted *by the assured* upon the express conditions that in case *the said person whose life is hereby insured* shall * *, this policy shall be null.

"It is also understood that if the *proposal* * * * *made*

by the said Leopold Luchs * * shall be found in any respect untrue * * this policy shall be null, * * or in case the said *assured* shall not pay the said annual premiums * * this policy shall cease.

"It is further agreed that this policy shall not take effect * * * until the premium above named shall be actually paid * * * during the life of the *insured*."

In the conditions endorsed on the policy reference is again made to payments of premiums during the life-time of the *insured*, (17.)

It is assumed in the brief of counsel for the company that the words "the assured" mean the person whose life is insured, and upon this error he builds his argument. But though the person whose life is insured is sometimes denominated "the assured" (especially where he takes out the policy for his own benefit, in which case he is both "the assured" and "the insured"), yet commonly (though not always) the phrase "the assured" is used to designate the person for whose benefit the policy is issued. In the second edition of Bliss on Life Insurance, published in 1874, this distinction is pointed out in section 5 and is maintained throughout the volume. In the form of a life policy given in May on Insurance (published in 1873), at page 745, the same distinction is clearly made. Many examples of policies in which the words "the assured" are used in this sense can be found in the records of this court. For instance, in the case of Insurance Co. *v.* France, 94 U. S., 561, the insurance was effected by a brother for his sister's benefit, and the policy (quoted on page 562) is substantially identical with that of this policy (aside from the statement as to who paid the premium), except that as "the assured" in that case was a woman the meaning is clearly brought out by the use of the pronoun "her" in the phrase "the assured, *his* executors, administrators, or assigns."

Policies in substantially the same form were sued upon by "the assured" after the death of "the insured" in the

following cases, as appears by inspection of the original records:

Insurance Co. *v.* Francisco, 17 Wall., 672.
Insurance Co. *v.* Wilkinson, 13 Wall., 222.
Insurance Co. *v.* Terry, 15 Wall., 591.

In the case of Terry (15 Wall, 591,) the insurance was effected by a husband for the benefit of his wife, who was the plaintiff in the action, precisely as the insurance in this case was effected by Dillenberg for the benefit of Luchs, and this Court says at the conclusion of its opinion (p. 591):

"In the present instance the contract of insurance was made between Mrs. Terry and the company, *the insured* not being in form a party to the contract. Such contracts are frequently made by *the insured* himself, the policy stating that it is for the benefit of the wife, and that in the event of death the money is to be paid to her. We see no difference in the cases."

This distinction between the insured and the assured is nowhere more manifestly observed than in the very policy now in suit, as appears above. And when the company wrote to its agent, after receiving the application and before issuing the policy, it inquired not why Dillenberg had insured his life for Luchs's benefit, but why Luchs had insured the life of his partner, (31.)

In support of his contention that this suit should have been brought by Dillenberg's administrator, counsel for the company cites a number of inapplicable decisions in Massachusetts.

Hollis *v.* Richardson, 13 Gray, 392, was an action upon a non-negotiable note by a transferee, who sued in his own name, and did not even aver an assignment.

The policy referred to in Gould *v.* Emerson, 99 Mass., 154, was payable to the person whose life was insured, his administrators, executors, or assigns; and the beneficiaries —his wife and children—were made such by statute.

In Campbell *v.* Ins. Co., 98 Mass., 381, the action was by the beneficiary—the wife of the insured—and was sustained because the objection to her suing in her own name was not seasonably taken, the court admitting that the point would have been fatal if taken in time. But the policy involved in that suit was also payable to the husband, his administrators and assigns, for the wife's benefit.

Bailey *v.* Ins. Co., 114 Mass., 177, was also a suit by a wife upon a policy on her husband's life, payable to *his* executors, &c., for her benefit.

The case in 107 Mass., 37—Bank *v.* Rice—was a suit on a bill of exchange.

The remaining Massachusetts case relied upon on the other side on this point—Burroughs *v.* Assurance Company, 97 Mass., 359—was a suit by an assignee of a policy, and was sustained on the ground that he had the legal title, and the children of the insured could assert their rights in equity.

None of these cases touch the question here involved, for in none of them was the promise made to pay to the beneficiary. Such a promise was made in Forbes *v.* Ins. Co., 15 Gray, 249. There one Smith insured his own life for the benefit of his sister, but the policy provided that the money should be paid, not to his executors, &c., but to the sister herself. An action in her name was sustained, although she was a stranger to the contract.

II.

As to whether the policy is invalid on the ground that Luchs had no insurable interest in Dillenberg's life.

In Insurance Company *v.* Schaefer, 94 U. S., 457, this court, after a full review of the question of what constitutes an insurable interest in a man's life, held that

"the essential thing is that the policy shall be obtained in good faith, and not for the purpose of speculating upon the hazard of a life in which the insured has no interest." In Insurance Company *v.* France, reported in the same volume, p. 561, where the policy sued on was taken out by David France, who paid the premiums, on his own life, but at his instance was made payable to his sister, this court said: "As held by us in Insurance Company *v.* Schaefer, *supra*, any person has a right to procure an insurance on his own life and to assign it to another, provided it be not done by way of cover for a wager policy. * * * The direction of payment in the policy itself is equivalent to such an assignment."

At the trial below the court submitted this case to the jury on the law as thus laid down by the tribunal of last resort, (45.)

Since then the case of Warnock *v.* Davis, 104 U. S., 775, has been decided in this court, and is now relied upon to defeat the present action. In that case one Crosser having applied to an insurance company for a policy on his own life for $5,000, agreed to assign a nine-tenths interest in the policy when issued to a certain trust association, in consideration of its agreeing to pay all the premiums. The policy was issued to Crosser and forthwith assigned by him to the association. Upon his death the association collected the insurance and kept nine-tenths of it. The suit was an action by Crosser's administrator, Warnock, to recover the money thus retained by the association. This court held that the policy was assignable to the association only as security for money advanced upon it, and not for any other purpose. "The association," says the court, "had no insurable interest in the life of the deceased, and could not have taken out a policy in its own name. Such a policy would constitute what is termed a wager policy, or a mere speculative contract upon the life of the assured, with a direct interest in its early termination. * * * The

assignment of a policy to a party not having an insurable interest is as objectionable as the taking out of a policy in his name."

It is contended on behalf of Luchs, *first*, that he had an insurable interest in the life of Dillenberg to an amount greater than $5,000 (or $10,000) when this policy was applied for, and when it was issued, by reason of the partnership relation between them. If that position be not sustained, or if it be held immaterial because it does not appear that the policy was taken out to protect that interest, it is maintained, *secondly*, that the policy, in view of the findings of the jury, is substantially one taken out by Dillenberg himself for the benefit of and made payable to Luchs, and is good under the rule laid down in Insurance Company *v.* France, notwithstanding what is said in Warnock *v.* Davis. *Lastly*, it is claimed on behalf of Luchs that if the policy be considered, what in strict legal effect it undoubtedly is, a policy taken out by Luchs on Dillenberg's life, it is a valid instrument in Luchs's hands, without reference to his insurable interest in Dillenberg's life, because he took it out in good faith and not for the purpose of speculating on Dillenberg's life—in other words, that he is protected by the rule laid down in Insurance Company *v.* Schaefer, notwithstanding what is said in Warnock *v.* Davis.

1. *Did the partnership relation between Dillenberg and Luchs give the latter an insurable interest to the amount of* $5,000 (*or* $10,000) *in the life of the latter?*

A preliminary question arises here as to the date when this insurable interest must have existed to be effective. The policy, though applied for and issued while the partnership was alive, was not delivered to Luchs by Dillenberg until after the dissolution of the firm. And it is argued by counsel on the other side that the delivery of the

policy to Luchs was necessary to clothe him with any rights under it. It is submitted that the settled rule of law is against this proposition.

In Neale *v.* Molineux, 2 C. & K., 672, one Scott, having a policy on his own life, assigned it to Neale, who gave notice to the company. Scott, however, retained the policy in his possession, and borrowed money on it from one who had no notice of the assignment. Scott and Neale both having died, in a suit between Neale's executor and the person who had loaned the money, it was held that the title passed to Neale by the assignment, notwithstanding the policy was never delivered to him.

In Packard *v.* this same Connecticut Mutual Life Insurance Company, 9 Mo. App., 470, a husband had taken out a policy on his own life for the benefit of his wife and children. He retained the policy in his own possession, paying the premiums himself for several years, when he surrendered it to the company and received in exchange a policy payable to his children alone, thus excluding the wife, who had never had the original policy in her possession. The court held that the wife's interest in the original policy vested when it was issued, and that it had not been divested, and could not be without her consent.

In Insurance Co. *v.* Baum, 29 Ind., 236, it was held that a wife had a right of action on a policy on her husband's life taken out by him for her benefit, although she knew nothing about the matter until after his death.

Finally, this court has very recently made a similar decision. In the case of Klein *v.* Insurance Co., 104 U. S., 88, Frederick W. Klein had insured his own life in the sum of $5,000 payable to his wife. The policy on its face appeared to be a contract between Klein's wife and the company, just as the policy here is on its face a contract between Luchs and the plaintiff in error. A premium fell due March 1, 1871, and was not paid. Klein died eighteen days afterward. His wife filed a bill in equity averring that from

about twenty days before the premium in question accrued till his death her husband was deranged in consequence of sickness; that the policy had been taken out without her knowledge, and that she knew nothing about its terms or conditions until after her husband's death, and praying that she might be relieved from the consequences of the forfeiture thus incurred; but the court said:

"The engagement of the insurance company was with Caroline Klein, and not with Frederick W. Klein. It entered into no contract with the latter. It agreed to pay Caroline Klein the insurance provided she paid with punctuality the premiums. She was never incapacitated from making payment. The alleged fact that she had no knowledge of the existence and terms of the policy does not relieve her default. If the fact be true, her ignorance resulted from the neglect of her husband, who, in respect to this contract of insurance, was her agent, in not informing her about the insurance upon his life and the terms of the policy. The bill is, therefore, an effort by her to obtain relief in equity against the appellee from the consequences of the carelessness or neglect of her own agent."

Assuming, then, that Luchs became entitled to the policy from the moment it was delivered for his use and benefit to Dillenberg, the question recurs whether, at that time, the fact that the two men were carrying on a thriving business as partners gave Luchs an insurable interest in Dillenberg's life. The general rule on the subject of what constitutes an insurable interest is fortunately established with sufficient certainty for the determination of this question. Insurance Company *v.* Schaefer and Warnock *v.* Davis agree on that point. According to the earlier of these two cases it is sufficient if Luchs shows that his "just hopes and well-grounded expectation of support, of patronage, and advantage in life" would be impaired by Dillenberg's death; and according to the latter decision it is sufficient to establish that Luchs had reasonable ground, "founded upon the

relations of the parties to each other," "to expect some benefit or advantage from the continuance of the life of" Dillenberg. These propositions are in substance the same.

When the application in this case was made the firm of Luchs & Company had been in existence over two and a half years. The profits during that period were about $5,000 a year, (29, 30.) Dillenberg was expected to remain at least a year longer; one-half his earnings during that time would belong to Luchs. Dillenberg "was a shrewd, industrious, and skillful business man," (44.) If he should die during the year the usual consequences of a sudden dissolution of a firm would follow.

On principle, then, how can it be denied that Luchs was justified in entertaining a reasonable expectation of advantage from the continuance of Dillenberg's life? Every dollar that Dillenberg earned was to be divided with Luchs. Together they had built up a large and flourishing business. The relations between them, aside from the partnership connection, were of the most intimate character; for the woman who was the wife of one was the sister of the other, and Dillenberg lived in Luchs's house and dined at Luchs's table. If Dillenberg should die, Luchs would be deprived of the aid of one who, by reason of his business qualifications, his experience, and his intimate social relations with Luchs, was better fitted, perhaps, to serve him as a partner than any one else.

It matters not that the duration of the partnership was limited to one year in the future, and that one half of Dillenberg's earnings in that time would not be likely to reach the amount of the insurance. Some interest the law requires to exist in these cases, but it is not required that he who takes out a policy on the life of another should be prepared to demonstrate with mathematical accuracy that the interest was equal to the amount insured. Such an interest is incapable of such an appraisement. All that is necessary at the most is that the sum insured shall not bear

such a disproportionate relation to the interest protected as to show on its face that the transaction is not a *bona-fide* one. To this effect are all the authorities.

In Cammack *v.* Lewis, 15 Wall., 643, which is relied upon by the plaintiff in error, an insurance of $3,000 was taken out, nominally to secure an indebtedness of seventy dollars, and this court held simply that this discrepancy "between the real interest of the creditor and the amount to be received by him deprives it of all pretense to be a *bona-fide* effort to secure the debt.

In Ins. Co. *v.* Mowry, 96 U. S., 544, the court, after stating that Mowry was a creditor of his uncle for $6,000, adds:

"And had agreed to embark with him in an enterprise requiring the expenditure of considerable capital and depending for its success upon the knowledge and skill of the insured in business. These circumstances gave the nephew such an interest in the life of the insured as to prevent the policy from being a wager one."

The amount of the insurance in that case was $10,000.

Loomis *v.* Ins. Co., 6 Gray, 396, was a suit by a father upon a policy for $500 on the life of his son, who was twenty years of age, and was about to go to California. The father had waived his right to a part of the son's expected earnings during the year following, but his legal right to the remainder still existed. The court held—Chief Justice Shaw delivering the opinion—that since a share of the son's earnings belonged to the father, the father had an interest in his son's life, and then says:

"It was argued that his [the son's] earnings, if anything, would be very small, * * * but nearness or remoteness of this chance is immaterial—the parties regulate that matter for themselves."

The same learned judge in giving the decision in the case of Morrell *v.* Insurance Co., 10 Cush., 282, used lan-

guage which is even more to the point. In that case W. C. Morrell went to California after making an agreement to pay one-fourth of his earnings for the year next ensuing to the plaintiff. In an action on the policy it was contended that it was void because the interest of the assured in the life insured was trifling. The court, however, said:

"But the court are strongly inclined to the opinion that the plaintiff had another interest in the life of the person on whose life he was insured by the defendants. He had a subsisting contract [*describing it*]. Such an interest cannot, from its nature, be valued or apportioned. It was an interest upon which the policy attached. By the loss of his life within the year the person whose life was insured lost the means of earning anything more, and the plaintiff was deprived of receiving his share of such earnings to an uncertain and indefinite amount."

In Insurance Company *v.* Johnson, 24 N. J. L., 576, one Middleworth's life was insured for $1,000, one-half payable to the plaintiff, Johnson, who belonged to an association which was virtually a partnership, and who had employed Middleworth to act as his substitute in the partnership.

In discussing the question of insurable interest, the court said:

"In the present case Johnson had a direct interest in the life of his substitute, whose earnings were to constitute a part of the joint funds of which he was entitled to his share, an interest fully equivalent to the interest of a wife in the life of her husband."

In this last-mentioned case the court refer with approval to the case of Valton *v.* Assurance Society, (cited in Angel on Insurance, 326, n.,) in which it was decided by the Albany, N. Y., Circuit in 1852 that where S., one of three copartners, put in his skill against the capital of the other two, a policy for $10,000 on his life for the joint benefit of the other two was valid.

In conclusion of this subject a case more convincing perhaps than any of the foregoing will now be referred to. Let it be borne in mind that the plaintiff in error is a Connecticut corporation; that by the terms of the policy in suit the loss is made payable at Hartford, in that State; and that the case about to be cited was an action against the very company which is now in court, and was brought in the courts of the State of Connecticut, and determined before the policy in suit here was issued. Let it be borne in mind also that the plaintiff in error before it issued this policy was informed that Luchs was about "to insure the life of his *partner*, Dillenberg," (31.) The case is Bevin against Connecticut Mutual Life Insurance Company, 23 Conn., 244. Bevin had insured the life of one Barstow for $1,000, and in a suit on the policy the company defended on the ground that the plaintiff had no insurable interest in Barstow's life. The court said:

"The plaintiff had advanced to Barstow the sum of three hundred dollars, besides articles of personal property, to enable him to go to California and there labor, for at least one year, and to account to the plaintiff for one-half of his gains in that business. He was the plaintiff's debtor and partner, giving to the plaintiff an interest in the continuance of his life, as by that means through his skill and efforts the plaintiff might expect not only to get back what he had advanced, but to acquire great gains and profits in the enterprise. All the books hold this to be a sufficient interest to sustain a policy of insurance. As to the value of the interest, we think it must be held to be what the parties agreed to consider it in the policy. * * * The plaintiff declared that he had an interest in the life of Barstow of $1,000. *The defendants received this declaration as true, and made it the basis of the insurance and of their premiums. Now, without deciding that such a declaration is in all cases conclusive as to the interest or damage, we hold that in a case like the present, where there is not a definite and specific interest, and much is to depend upon the character and continuance of the enterprise, such declaration, if honestly made, is the agreed value of the interest.*

The impossibility of satisfactorily going into the question in most cases, and especially where there is nothing to guide the inquiry and everything is uncertain, would lead us to hold that a policy like this is a valued policy as most consistent with the understanding of the parties and the principles of law."

2. *Dillenberg had an insurable interest in his own life to an unlimited extent, and as this policy was taken out under an agreement between him and Luchs, whereby the former undertook to pay the premiums, it is valid under the rule laid down in Insurance Co.* v. *France.*

However the authorities may differ on the question of insurable interest, it is believed that they speak with one voice to the effect that a man has an interest in his own life to any extent to which he may choose to value it, and that if he take out a policy of insurance on his own life he may designate at his pleasure to whom the insurance shall be paid upon his death, (*a.*) This court, besides the explicit decision to that effect in Insurance Co. *v.* France, has repeatedly approved of this doctrine, and it is recognized in the case of Warnock *v.* Davis, 104 U. S., 775, relied upon by the other side. There can be no doubt, therefore, that this policy would have been good if it had been made in the form of a contract between Dillenberg and the company, and payable either to Dillenberg and his legal representatives for the benefit of Luchs, or directly to Luchs. If it had been made payable to Dillenberg's representatives for the benefit of Luchs it would have been like the policies sued on in the several Massachusetts cases relied upon by the plaintiff in error in support of his objection to Luchs's right to bring this action; while if it had been

(*a.*) Bliss on Insurance (2d ed.), sec. 26; Rawls *v.* Ins. Co., 27 N. Y., 282; Lemon *v.* Ins. Co., 38 Conn., 302; Ins. Co. *v.* Robertshaw, 26 Pa., 189; Ins. Co. *v.* Baum, 29 Ind., 236; Loomis *v.* Ins. Co., 6 Gray, 396; Conn. M. L. Ins. Co. *v.* Schaefer, 94 U. S., 457; Campbell *v.* Ins. Co., 98 Mass., 381; Hine & Nichols' Assignment of Life Policies, 75.

made payable to Luchs himself it would have been like the policies sued on in this court in Insurance Co. *v.* France, Klein *v.* Insurance Co., and many other cases.

Instead of either of these forms being adopted the same end was obtained by making Luchs the nominal payer of the premiums. But Dillenberg was to pay them in fact; he did pay the first premium, and he promised to pay all the others. Practically, as has been shown, he received more than the amount insured as a consideration for this agreement. The policy was delivered to him, and he retained it till he left Washington to go west. Luchs acted in the matter in good faith, without any intention of speculating on Dillenberg's life, and it was only when Dillenberg became insane, and therefore unable to pay the premiums himself, that Luchs took any part in keeping the policy alive. It is impossible that public policy should require the destruction of rights so acquired when they would have been sustained if the policy had recited the fact that Dillenberg had paid the first premium and was to pay the others, and that the contract to pay to Luchs was made with Dillenberg and not with Luchs himself. As was said by Judge Sharswood in overruling a motion for a new trial in a case in which the Supreme Court of Pennsylvania afterwards affirmed the judgment for the reasons stated by him (Ins. Co. *v.* Robertshaw, 26 Pa., 189):

"It is an ungracious defence. * * * I can see no good reason why a man having an insurable interest in his own life may not insure it and present the policy as a gift to a friend; and if such an agreement to give be made at the very time of the contract, why may not the policy be made at once in the name of the donee, the whole transaction being *bona fide*—no fraud on the company intended?"

3. *Considering the policy as one taken out by Luchs on the life of Dillenberg, and assuming that the former had no insurable interest in the latter's life, the policy is nevertheless valid, be-*

cause it was taken out by Luchs in good faith and without any intention of speculating on Dillenberg's life.

An examination of the decisions of the courts of this country, Federal and State, reveals the fact that they have never yet undertaken to decide precisely what it is that makes a policy of insurance taken out by one man on the life of another, valid or void, as the case may be. In the most recent case in this court—Warnock *v.* Davis—the court say: "It is not easy to define with precision what will, in all cases, constitute an insurable interest, so as to take the contract out of the class of wagering policies."

In that case, although the point was not involved, as well as in most of the authorities on this subject, it is intimated that where such policies are void, they are void for the reason that the holder of the policy has a direct interest "in the early death" of the subject of the policy, which is not counterbalanced by any interest in the continuance of his life. With great respect it is submitted that this reason alone is not sufficient to justify the destruction of a policy of insurance under any circumstances.

It is remarkable that in the discussion of this question the attention of the courts seems never to have been called to the numerous other classes of cases in which the law itself places a man in such a position that he will be benefited by the early death of another, in whose life he has no interest whatever; nor to the cases, hardly less numerous, in which it permits him, by contract or purchase, to voluntarily encounter such a temptation. For the first time, it is believed, an attempt will now be made to array these cases.

The principal instance of men being subjected involuntarily to a temptation of this kind is that which grows out of the usual laws of inheritance. Upon the death of a man intestate the law gives to his heirs or next of kin his entire estate, subject only to the claim of his

creditors, if any he have. It is true that the estate often, perhaps in a majority of cases, falls to the wife or children of the decedent, who have an interest in his life; but in a vast number of cases, and perhaps in most cases, those who are thus benefited by the death of a relative are those who do not have an *insurable* interest in the life of the decedent. Indeed, it has quite recently been held that a son, merely as such, has no insurable interest in the life of his father. (*b*) Counsel on the other side cite other cases in which it has been held that relationship almost as close as that of father and son does not of itself furnish valid ground for insurance.

Again, the owner of property is allowed to dispose of it by will—to designate to whom it shall be transferred or delivered upon his death. He is not required to confine his bounty to those who may have an interest in his life; indeed, the purpose of a will often is to prevent the testator's property from going to his immediate relatives, and to give it to those who are more distant, or who are in law strangers. Neither is he required to conceal from those who are to be benefited by the will its terms. Hence arises an immense number of cases in which the owner of property is allowed to make interested in his death persons who have no reason for wishing him to live a day after the will has been made.

So, too, nothing is commoner in devises and conveyances of real property than to have an estate limited to A for life, and upon his death to B in fee-simple. In such case B need not have, and indeed usually does not have, any interest in A's life; and B may dispose of his estate in remainder to whoever will purchase it, so that here A's life is exposed to risk, and he has no voice in saying to what person the temptation to kill him shall be committed. More pertinent still are the cases, not uncommon, in which

(*b*) Insurance Co. *v.* Hogan, 80 Ill., 45.

real estate is conveyed to A for life, and after A's death, if B survive him, to B, but if not, over. Here neither B, nor his heirs, nor devisees, can take the estate unless A die first.

It is hardly less common to limit personal property in the same way. Not to multiply familiar examples, take the significant case of Smith *v.* Bell in this court (6 Pet., 68). One Goodwin bequeathed certain slaves to his wife for life, and then to their son. The son, during his mother's life, sold his interest in the slaves to the plaintiff, who was thus compelled to see his property wear old and daily grow less valuable while he awaited the death of the mother. After the mother's death the plaintiff replevied the slaves from her second husband, who contended for another construction of the will. This court said when the replevin suit came before it:

"The rule that a remainder may be limited after a life estate in personal property is as well settled as any other principle of our law. The attempt to create such limitation is not opposed by the policy of the law or by any of its rules."

Nor, as has already been stated, does it make any difference that the person who is thus tempted to kill another in whose life he has no interest, has been placed in that position by operation of law, or by the act of a testator, or by merely acquiring the rights of another already so placed; he, in the first instance, may have purchased the right to be placed in such a position, and the law will enforce the contract. There are numerous instances in the books in which contracts to make wills have been held valid and enforced against the representatives of the decedent (*c*). A striking instance

(*c*) Owing's case, 1 Bland, 370; Parsell *v.* Stryker, 41 N. Y., 480; Wright *v.* Tinsley, 30 Mo., 389; Moorehouse *v.* Colvin, 9 E. L. & E., 136; Canada *v.* Canada, 6 Cushing, 15; 1 Story's Equity Jur., section 785; Smith *v.* Smith, 5 Bush, 627; Bell *v.* Hewett's Exc'r, 24 Ind., 280.

of this kind may be found in the reports of a court whose decisions on insurance law are very freely referred to in the brief on the other side, and are quoted with approval by this court in Ins. Co. *v.* Schaefer as well as in Warnock *v.* Davis. In the case referred to (*d*) one Ira Gurney and his sister Polly had given a bond to the plaintiff, Jenkins, (who was not related to them, so far as appears from the opinion of the court or the statement of the case,) in which it was recited that in consideration of Jenkins's having agreed to "support us and our mother for our natural lives, we agree to leave him and his heirs all our personal estate, as well what we now have in possession as what we may receive at the decease of our mother, *if we should survive her*, it being our wish to retain in our hands the said personal estate that we may have the management and use of it during our lives." In an action at law upon this bond brought by Jenkins against the executor of the will of Polly Gurney, the Supreme Judicial Court of Massachusetts said:

"The bond contains no agreement which is against public policy. That it is competent for a party to stipulate for the disposition of his property at the time of his decease is too well settled to admit of doubt or question."

The court will not fail to notice that in the case just cited Jenkins had a double incitement to murder. It was to his interest in the first place that the mother should die before the obligors in the bond, otherwise her estate would be lost to him forever; and in the next place it was important to him that Ira Gurney and his sister should die as soon as possible, for not only was he debarred from enjoying their personal estate while they lived, but he had to run the risk of its deteriorating in value or being entirely worn out in consequence of their use of it; and, as he had to support

(*d*) Jenkins *v.* Stetson, 9 Allen, 128.

them, the consideration which he was giving for the property increased every day that they lived, and in time might amount to more than the property was worth.

A special class of contracts to make wills is particularly interesting in this connection. For an example, the court is referred to a case in the House of Lords—Logan against Weinholt, 7 Bligh, 53, (*e.*) There Daniel Burkett, the elder, in consideration of the approaching marriage of his niece, Sarah Jopson, covenanted that if he should die unmarried and without issue he would bequeath to her or her issue, if she or they should survive him, "so much in money or valuable effects as he should by such will give or bequeath to any one of his next of kin, or any other person." The peculiarity of this case is, that while the testator was bound to dispose in a certain manner of any property which he might own at the time of his death, he was under no obligation to keep any of his property until that time; he could squander it as he pleased. There are several other cases of the same kind, (*f.*)

Still another series of decisions must be adverted to in this connection, one which is noteworthy, because it involves a class of contracts, the validity of which, on grounds of public policy, has been thoroughly discussed. Reference is made now to suits growing out of catching bargains with heirs—bargains by which the heir has sold to a purchaser in advance of his ancestor's death the estate, or part of the estate which he expects will come to him when such death occurs. The validity of such contracts, when fairly made, nobody now disputes. Courts of equity take care that if the purchase is concealed from the ancestor, it shall not

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(*e*) See reference to this case as "another curious case illustrative of the extent to which courts of equity go," in 1 Story's Eq. Jur., sec. 786.

(*f*) Cotharin *v.* Graham, 19 Vesey, 63; and see cases cited in note 2 to Lewis *v.* Maddocks, 8 Vesey, 150.

stand; nor unless an adequate consideration has been paid; but if the compensation paid be a fair one, and the transaction has been fully made known at the time to the ancestor, and is not objected to by him, and there is no fraud, the sale is valid and the purchaser will realize more or less profit, or no profit at all, or lose his investment, according to the duration of the life of the ancestor in whose early death he thus acquires a direct interest. Of course the same principle applies in the case of the purchaser of other estates in expectancy, from devisees, and other expectants where the vesting of the estate which is purchased depends upon the death of the owner of the property or of the preceding estate. (*g.*) Of a similar character are *post obit* bonds made by heirs and expectants, and also contracts "by which an expectant heir, upon the present receipt of a sum of money, promises to pay over to the lender a large though uncertain proportion of the property which might descend upon the death of his parent or other ancestor if he should survive him." Such contracts are looked upon with the same suspicion as the others; but if, under all the circumstances, a fair price be paid—especially if the ancestor consent to the transaction—the sale is good. (*h.*)

In relieving against contracts made with heirs and other expectants, the courts have been very careful of the interest of the heir or expectant. They will see that he is not encouraged to spend the estate in prodigality and dissipation before he becomes the master of it. But it does not appear to have entered the mind of any of the numerous tribunals which have carefully considered the validity of such contracts from the stand-point of public policy that the ances-

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(*g*) For discussion of this subject see 1 Story's Eq. Jur., §§ 334–342.

(*h*) 1 Story's Eq. Jur., §§ 342, 343, and notes. See in particular the opinion of C. J. Parsons in Boynton *v.* Hubbard, 7 Mass., 119, 120, cited as "explaining this whole subject with admirable fullness and force."

tor or other person upon whose death the vesting of the estate depends, and the prolongation of whose life beyond that of the heir or other expectant may prevent it from ever vesting, is in danger, or that *he* needs to be protected. Even where the purchase has been consummated without his knowledge, and the purchaser stands by, waiting impatiently for his death, and he goes on his way thinking that it is his child or other heir who is to be benefited by his death when it comes, it appears never to have been suggested that the contract was against the public interests on that ground; and where the purchase has been made known to the ancestor it has never been thought that anything but such fraud as would vitiate any contract or purchase would defeat the claim of the purchaser.

Lastly, there is the familiar instance of joint tenancy in real or personal property. This may arise either from a devise or a voluntary purchase, or from an agreement between persons who already own the property as tenants in common; but however it is created, each of the joint tenants is directly interested in the death of the others.

In all these cases one man is to profit by the death of another whose life is ordinarily of no benefit to him; and in most of them there exists a strong element of temptation to crime which does not visit the mind of the holder of a policy of insurance. The heir may be cut off by a will, by a marriage, with issue, or by the ancestor consuming the estate; the legatee may lose his gift by the testator cancelling the will or making a new one, or spending the money which is bequeathed; the man who has contracted to leave his property in a certain way if he own any when he dies, may lose it all before his will speaks; the purchaser of a remainder in personal property may see the owner of the preceding estate live till the property becomes worthless from use; and the man who has purchased an expectancy from an heir may see the ancestor survive the expectant: while he who holds a policy of insurance on the

life of another knows that the insured has no control over the fund, and he can therefore bide his time with much more patience than the others.

Again, in all of these examples of temptation to crime the person tempted has this reflection to encourage him to yield: that, even if discovered, the fact that he may have taken by violence the life that is in his way will not prevent the property he covets from coming to him. Though the heir kill the ancestor, or the remainderman kill the owner of the life estate, the title descends. But if the assured take the life that is protected by his policy, and is detected, the law steps in and proclaims his act to be a fraud as well as a crime, and the insurer is not liable. And by consequence it follows that when the heir or the remainderman seeks to profit by killing the man who is in his way, no one is pecuniarily interested in exposing the crime; while if a man whose life is insured dies a violent or supicious death, the company that has insured him is stimulated by the hope of saving the insurance to ascertain whether a murder has been committed, and if so to trace the crime home to the policy holder.

Moreover, if the fear of bringing about the death of men whose lives are insured were allowed to govern the decision of questions as to the validity of the policies, it would put an end to that kind of insurance which the law most favors. No one who has read even casually the books on insurance can fail to have been struck with the great number of decided causes in which the result turns on the effect to be given the suicide of the insured. For every instance of the killing of the insured by the policy holder to benefit himself the books contain fifty instances of the insured having committed suicide to benefit his family. Greater is the temptation to self-destruction in the latter case than the incitement to commit murder in the former.

But it is in cases of life insurance itself that we find the

most forcible examples to sustain the position that it is not against the policy of our laws for a man to be placed, or to place himself, where he will profit by the death of one in whose life he has no concern.

In the first place a policy of insurance on the death of the assured goes to his administrator, and so may be sold by auction like other assets, or pass by bequest to any legatee.

In the second place, as has already been seen, it is settled law—established or recognized in this court by three decisions (*i*)—that a man may insure his own life to any extent and designate whom he chooses to receive the insurance when he dies. It is manifest that the designated beneficiary, as such, has no interest in the matter except to have the life that is insured terminated as soon as possible.

Again, it is established that a policy valid at its inception is not vitiated by the cessation of the insurable interest upon which it is founded. In Insurance Company *v.* Schaefer this court held that where a policy had been issued on the joint lives of Schaefer and his wife, payable to the survivor on the death of either, it remained valid after the parties had been divorced and both had remarried; and in reaching this conclusion the court relies upon the English decisions to the effect that, where a creditor insures the life of his debtor the policy remains valid in his hands after the debt is paid. Here is a clear case of voluntary temptation.

In the same case, Insurance Company *v.* Schaefer, it appeared that the policy there sued on was a joint policy on the lives of Schaefer and his wife, that is, the insurance, upon the death of one of them, was payable to the other; and the court said that therefore the policy "might be sustained as a joint insurance, without reference to any other interest, or to the question whether the cessation of interest

(*i*) Insurance Co. *v.* Schaefer, 94 U. S., 475; Insurance Co. *v.* France, 94 U. S., 531; Warnock *v.* Davis, 104 U. S., 775. And see cases cited on page 18 of this brief.

avoids a policy good at its inception." "There is no doubt," says the learned judge who delivered the opinion in that case, "that two or more persons may effect an insurance on their joint lives for the benefit of the survivor or survivors. The old tontines were based substantially on this principle, and their validity has never been called in question."

Here, then, is an express decision of this court that a man may effect a valid insurance upon the life of another, provided the other does the like by him, neither of them necessarily having any interest in the life of the other; and practically that a number of men may combine to insure each other's lives, each of them being probably a stranger to all the others.

It would seem that this discussion might end here; for if the mutual agreement between two men to insure each other's lives furnishes a good consideration for the contract between them, surely, if the surrounding circumstances are the same, an insurance by one of them only on the other's life obtained by mutual arrangement between them for any innocent purpose, will not be disturbed. If Luchs may insure Dillenberg's life on condition that Dillenberg shall, at the same time, insure the life of Luchs, certainly he may do so on any other reasonable condition. Otherwise an agreement to take a position that can be made profitable only by the death of another, instead of being discountenanced, would be preferred over one which gives rise to no such temptation.

In view of all this, it must be conceded that a man may contract to acquire a benefit by the death of another in whose life he has no interest, and, when the death occurs, enforce the agreement in a court of law.

On the other hand, there is just as little doubt that when a man goes to an insurance company and obtains from it a policy on the life of a third person, in which life he has no

interest, and nothing further appears to justify the transaction, the courts hold the policy invalid, or at least that the insurance when collected by the policy holder becomes a trust fund for the benefit of the estate of the insured. The true ground, however, of these decisions is, not that public policy forbids a man to acquire an interest in another man's death when he has none in his life, but that it forbids gambling, or will not permit the law to aid a gambler in recovering his winnings. Such a transaction is gambling, and nothing else. This is nowhere else so clearly shown as in the opinion of the Supreme Court of Kansas in a case cited and relied upon by counsel on the other side. (*k*)

In that case, (which was a suit by the assignee of a policy, the circumstances surrounding the assignment not appearing in the report,) the gambling element and the temptation-to-crime element are so commingled in the opinion of the court that it is impossible to say which of them was principally relied upon. But it has been shown above, it is submitted, that the temptation to crime resulting from these contracts *of itself* furnishes no objection to them at law or in equity. The fact that the transaction is pure gambling, a wager and nothing more, is sufficient to prevent their enforcement in any court, and on no other ground can an action on such a contract be defeated consistently with the uniform rulings of the courts in multitudes of other cases involving the same principle. It follows that if in such a transaction anything further appears to take away from it the taint of gambling, it is a good contract. The usual evidence to this effect is the fact that the assured will be injured in some way by the termination of the life insured, and has taken out the policy to protect himself from such danger. But it is manifest that other facts equally potent may be shown. For instance, it may appear that the per-

(*k*) Insurance Company *v.* Sturges, 18 Kan., 93. And see 7 Mass., 119.

son whose life is insured has, as the agent of the assured, taken out the policy and paid the premiums, so that the policy-holder has had nothing to do with the transaction, except passively or constructively; or, to take the strongest of many instances of this kind, it may appear that the person whose life is insured has himself taken out a similar policy on the life of the assured in the first policy, under an agreement between the two. Such in effect are the cases of joint insurance held by this court to be unquestionably valid in Insurance Company *v.* Schaefer.

The result of this argument is that the absence or the presence of an interest in the life insured is merely evidence tending to show that the transaction is or is not essentially a wager, and that it is by no means a conclusive circumstance. The failure to observe this distinction, which seems never to have been clearly noted before, has produced endless confusion, not so much in the decisions of the courts as in the reasons given for those decisions. It has made the Supreme Judicial Court of Massachusetts say (in Insurance Co. *v.* Loomis, approved in Insurance Co. *v.* Schaefer) that a child undoubtedly has an insurable interest in the life of its parent; while the Supreme Court of Illinois (in Insurance Co. *v.* Hogan, 80 Ill., 45) decided the reverse, both cases being unquestionably decided properly under the peculiar circumstances of each. It has made the Supreme Courts of Indiana (in Insurance Co. *v.* Hazzard, 41 Ind., 116) and Kansas (in Insurance Co. *v.* Sturges, 18 Kansas, 93) hold that the assignment of a life policy to one who has no interest in the life insured is always invalid; while the Court of Appeals of New York and many other learned tribunals (as is stated in Warnock *v.* Davis) hold them always valid—these rules having been laid down in cases all of which were properly decided, so far as can be judged from the meagre statement of facts contained in most of them. It has made the Supreme Court of Indiana completely stul-

tify itself in a series of four remarkable decisions on the question of the transferability of insurance policies, although each of these four cases was correctly decided (*l*). It has caused the Supreme Judicial Court of Massachusetts (in Stevens *v.* Warren, 101 Mass., 564,) to hesitate in admitting a principle as well established, in that court and elsewhere, as the right of a man to make a will—the principle that he may insure his own life and designate a beneficiary as freely as he would a legatee.

Of course, in determining whether a policy is valid as a contract, or void as a wager, it is not so much the form of the agreement as its substance that is to be considered. An instance of this is to be found in two English cases (*m*), arising under the English statute on this subject, which provides that no insurance shall be made on the life of any person where the beneficiary has no interest in the life insured (*n*). The English courts, like the American, have uniformly held that a man has an insurable interest in his own life to an indefinite extent, and that the statute has no application where the insured takes out the policy and assigns it to the beneficiary. In the two cases in question the policies were taken out by the insured, but it appeared in evidence that they were so taken out at the instance of the beneficiary, who had agreed to pay all the premiums. The court held in each case that the transaction was in substance such a one as was covered by the statute, and therefore void.

(*l*) Ins. Co. *v.* Baum, 29 Ind., 236; Ins. Co. *v.* Hazzard, 41 Ind., 116; Hudson *v.* Merrifield, 51 Ind., 24; Ins. Co. *v.* Sefton, 53 Ind., 380.

(*m*) Shelling *v.* Ins. Co., 2 H. & N., 42; Wainwright *v.* Bland, 1 Moody & Rob., 481.

(*n*) Of this statute a recent writer says: It is scarcely too much to say that in modern times it has never been put in force, except to evade a just claim. Law Mag. and Law Rev., vol. 28, Feb'ry, 1870, p. 193. See comments of Mr. Bliss in his work on Life Insurance, 2d ed., sec. 8.

The American cases, (*o*) including Cammack *v.* Lewis in this court, are to the same effect. Warnock *v.* Davis is just such a case, and if the decision in that case had been decided as Cammack *v.* Lewis was, solely upon the ground that the assignment was a mere cover, it would have been consistent with Insurance Co. *v.* Schaefer and Insurance Co. *v.* France. (*p.*)

It must be obvious, on the other hand, that if the contract be apparently a wager, but in substance an honest contract, public policy does not require it to be overthrown. Thus, if a man having an insurable interest in his own life, to an unlimited extent, wishes to insure his life at his own expense for the benefit of some other person—kinsman, friend, creditor, or what not—it is clearly immaterial whether he has had the contract made with himself and the promise to pay to the proposed beneficiary, as was done in Klein *v.* Insurance Co., or whether, assuming to act as the agent of the object of his bounty, he has the contract made in form between the insurer and the beneficiary, as was done in the case of Insurance Co. *v.* Robertshaw, 26 Pa., 189, p. 19 of this brief. In either case the insured is the actor in the matter, pays the premiums, and is, in effect, making a will *pro tanto*. If the courts will break through forms and go to the bottom of a transaction of this kind to

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(*o*) Bliss on Life Insurance, page 36, n. 1 and 2.

(*p*) The whole subject of assignments of life policies is admirably treated in a work published in 1881, entitled, "Hine *v.* Nichols' Assignment of Life Insurance Policies." In Chap. VII of that book all the cases on the question of the validity of such an assignment are collected and a conclusion reached (p. 49, *et seq.*) which is in exact accordance with that reached independently in this brief, namely: That it is valid when made not as a contrivance to circumvent the law, but as an honest and *bona fide* transaction; and that there is no more peril to human life from such a transaction than from the purchase of an estate in remainder after a life estate "which exposes the purchaser to a similar tem[illegible]n."

find that it is gambling, they will certainly do so to find that it is not.

It remains only to consider whether in the case at bar there was evidence tending to prove that Luchs did not acquire the policy in suit by way of making a wager with the plaintiff in error as to the time when Dillenberg should die, and whether that question was submitted to the jury with proper instructions from the court.

The first suggestion that such a policy should be taken out came from Myers, who was called in to help adjust the dispute between Luchs and Dillenberg, (8, 9, 10.) Dillenberg assented to the arrangement and agreed to pay the premiums. He obtained in consideration of this agreement a settlement which virtually gave him nearly $6,000 more than he had earned. Luchs, aside from signing the application when it was presented to him as a matter of form, had nothing to do with the transaction, except passively, until several months after the policy was taken out, when it was delivered to him by Dillenberg, who announced himself ready to carry out his agreement by paying the premiums in future, and he did pay them until deprived of the power of doing so by the act of God. The evidence tending to prove these facts was wholly uncontradicted. The court left it to the jury to find whether they were true, and whether Luchs acted in good faith and not as a speculator on life.

The verdict speaks for itself. It determines that there was no wager in this case.

III.

As to the Alleged Breach of Warranty.

The statements in the application are presumed to be true until the contrary is averred and proved. So this

court has three times decided, (*q*.) In the present case the defendant below by its pleas averred that the policy was issued upon the faith of certain written statements and answers of the plaintiff, and that three of those statements or answers were untrue, (4.) To these three it is therefore confined. These alleged misstatements are, *first*, that Luchs had an insurable interest in Dillenberg's life to the amount of $10,000; *second*, that the plaintiff, having been asked in the application how many [of Dillenberg's] brothers were dead and what was the cause of death, had answered that one brother was dead and that the cause of death was accident, when in fact the cause of the brother's death was suicide; and *third*, that the inquiry was made in the application whether any * * * brother * * * was ever afflicted with insanity or pulmonary disease, and the answer was "No," when in fact the brother who committed suicide was suffering both from consumption and insanity when he killed himself.

As two of the questions raised here apply to the rulings of the court at the trial in reference to all of the alleged misstatements, they will be considered before taking up questions relative to the separate misstatements. One is the instruction that substantial truth is all that is required in the answers, (45, 46.) That instruction was based upon the ruling of this court in Insurance Company *v.* Francisco, 17 Wall., 680, and nothing more need be said about it.

The other is the instruction to the effect that if the company, by its agents, prepared the application and Luchs signed it in good faith without reading it or being asked to read it, he is not bound by the statements which it contains, (46.) This instruction was based upon the uncontradicted evidence of Myers and Luchs (8, 9, 43), and is in

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(*q*) Ins. Co. *v.* Mahone, 21 Wall., 152; Ins. Co. *v.* Ewing, 92 U. S., 377; Ins. Co. *v.* Baker, 94 U. S., 610. See also Ins. Co. *v.* Robertson, 59 Ill., 123, and Reliman *v.* Ins. Co., 49 Wis., 431; May *v.* Ins. Co., 25 Wis., 291.

strict accordance with the law laid down in Ins. Co. *v.* Wilkinson, 13 Wall., 222; Ins. Co. *v.* Mahone, 21 Wall., 152; and Ins. Co. *v.* Baker, 94 U. S., 610. In the last-mentioned case the court said:

"The statement was one prepared by the company, for which it was responsible, and it cannot be set up to defeat the policy, (*r.*)"

The objection to this instruction stated in the brief on the other side—that it assumes that Myers was the agent of the company—is untenable. Upon the hypothetical case stated in the instruction Luchs was not bound by the application even if Myers be considered his agent; for it assumes that Willard told Myers simply to get it signed and that Myers did not know its contents, (46.) And besides, if the hypothetical case be true, the company was bound by Myers' acts in the transaction. Insurance agents commonly employ assistants by whose acts as sub-agents the principal is bound; and where the company knows a sub-agent has been employed upon a commission and does not object, he becomes its authorized representative, (*s.*)

Further, as will be shown below, there was submitted to the jury no legal evidence even tending to prove that either of the alleged misstatements was made, and it is therefore of no consequence whether the rulings at the trial on this branch of the case were correct or not.

First. *As to the declaration that Luchs had* $10,000 *interest in Dillenberg's life.*

(*r*) See also Flynn *v.* Ins. Co., 78 N. Y., 568; Ellinberger *v.* Ins. Co., 89 Pa. St., 464.

(*s*) Borden *v.* Ins. Co., 51 N. Y., 117; Van Schaick *v.* Ins. Co., 68 N. Y., 434; Allen *v.* Ins. Co., 85 N. Y., 473; Davis *v.* Ins. Co., 18 Hun., 230; Savings Bank *v.* Ins. Co., 31 Conn., 528. And see Ins. Co. *v.* McCain, 96 U. S., 84.

1. The instruction on this subject (49) was correct. All that has been said in this brief in reference to the validity of the policy would apply with equal force if the sum insured had been $10,000 instead of $5,000. But see, especially, authorities as to the rights of a man to insure the life of another in whose earnings he is entitled to a share, beginning on page 15 of this brief.

2. This statement, unlike most of the other statements in the application, is essentially the mere expression of an opinion, and must have been so understood by the company, and, at the most, the question is whether the valuation is one which an honest man could fairly make, (*t.*) More properly it is an opinion on a mixed question of law and fact, incapable of being the basis of a warranty. (See Sefton *v.* Ins. Co., 53 Ind., 380.)

Second. *As to the alleged statement in the application that one brother was dead, and that the cause of death was accident.*

No such answer was made; and no answer at all was made, or required to the questions, "Brothers dead * * * age * * * cause of death," (13.) The attempt that is made to incorporate into this application the answers to the same questions contained in the previous application made by Dillenberg, is submitted to this court without argument.

Third. *As to the alleged answer "No" to the alleged question whether any brother was ever afflicted with insanity or pulmonary disease.*

1. This alleged misstatement, like the other two relied upon, the plaintiff in error did not support at the trial with

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(*t*) Ins. Co. *v.* Robertshaw, 26 Pa., 189; Bevin *v.* Ins. Co., 23 Conn., 24; Hilling *v.* Ins. Co., 54 Cal., 156; Boutille *v.* Ins. Co., 51 Vt., 12; Ins. Co. *v.* Ware, (Court of Appeals, Ky.,) 13 Reporter, 464.

one word of legal evidence. When the application was produced it appeared that the question was, "has * * * brother * * * ever been afflicted with insanity or with pulmonary or any other *hereditary* disease?" That a warranty of an answer to a question in this form is broken only by proof of one of the diseases mentioned in an hereditary form, was expressly decided in Gridley *v.* Ins. Co., 14 Blatch., 107, and the decision was affirmed here, (100 U. S., 614.)

2. Not only was there no allegation that the answer "No" referred to hereditary disease, but there was no legal evidence that the brother ever had either of the diseases mentioned in any form. The only fact relied upon to prove that the brother of Dillenberg was ever insane was the circumstance that he committed suicide. That suicide is not even *prima facie* evidence of insanity, has been often decided (*u*), and it was so held by this court in Insurance Co. *v.* Terry, 15 Wall., 580, and Ins. Co. *v.* Rodel, 95 U. S., 232. As to consumption, the only evidence relied upon to prove that the brother ever had that disease was the entry made in the records of the insane asylum, under the heading "Hereditary," in 1870, (40.) The defendant in error did not accompany Dillenberg to the asylum when that entry was made, and no attempt is made to connect him with it. When Dillenberg was readmitted to the asylum in 1872, (41,) Leopold Luchs did take him there. The entry made at that time in the column entitled "Hereditary" is simply "No hereditary taint," (41.)

Fourth. *As to Dillenberg's having been insane when the policy was issued.*

In answer to what the very learned counsel on the other side has seen fit to say in his brief on this subject, although

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(*u*) Bliss on Insurance [2 ed.], § 67, citing many cases.

it does not come within any of his assignments of error, the court is reminded:

1. That one of the questions in the application upon which this policy was issued is, "Is the party now afflicted with any disease or disorder, and what?" and the answer is, "None," (13,) and that the pleas do not aver that this answer was untrue.

2. That no instruction on this subject was asked, or given, except the instruction D, (47,) granted at the instance of the defendant at the trial, by which the jury were told that if they found that Dillenberg was afflicted with insanity prior to the insurance their verdict must be for the defendant; and

3. That there was not a particle of legal evidence offered to the jury tending to prove that Dillenberg showed any symptoms of insanity prior to the autumn of 1870. The "evidence" relied upon was the pencil memorandum, "previous attack better and worse for four years," and the entry, "duration of disease, six years" in the insane asylum records, by whom or when made nobody knows (40); and the fact that Dr. Nichols, in charge of the insane asylum when Dillenberg died, in first making out the proofs of loss, stated that Dillenberg had been insane for about ten years. This statement was evidently made from the above entries, which he found on his records. He had not known Dillenberg before Dec. 7th, 1870, (33.) His statement in the proofs of loss, even if it had not been corrected before the proofs were received by the company, would have been inadmissible, as was decided by this court in Ins. Co. *v.* Higginbotham, 95 U. S., 380.

IV.

As to the alleged inconsistency in some of the instructions given to the jury.

As the alleged inconsistencies, all relate to prayers granted at the trial bearing upon the law applicable to the defence

of breach of warranty, and the defendant at the trial did not offer any admissible evidence in support of that defence, while the inconsistency is denied, it is useless to weary the court with a discussion of the several instructions. Suffice it to say that the instructions granted at the plaintiff's request have been shown to have been drawn in accordance with the decisions of this court, and if those afterwards granted at the instance of the defendant's counsel are erroneous, which is not denied, it is not for him to complain that while the court held his adversary within proper limits it allowed him to go beyond them.

V.

As to the alleged concealment from the company of material facts.

The last assignment of error is based upon the refusal of the court to grant the instructions asked for by the company—Nos. 3, 4 and 6, (48.) Those instructions all relate to the alleged suicide of Bernhard Dillenberg, and are to the effect that the failure of Luchs to communicate that supposed fact to the company vitiates the policy.

There are four complete answers to this assignment of error:

1. The question of materiality was for the jury, (*v.*)

2. Proof of the suicide was of no consequence, because it was not followed up by evidence tending to show that it was brought about by insanity or other *hereditary* disease. (Insurance Company *v.* Gridley, 100 U. S., 614.)

(*v*) Insurance Co. *v.* Chase, 5 Wall., 515; Mullory *v.* Insurance Co., 47 N. Y., 52; Bliss on Ins., sec. 384; May on Ins., sec. 184. Of the cases cited by counsel on the other side on this point, those in 8 B. & C., 98 Mass. and 21 Pa. St., are directly against him, and the others do not touch the question.

3. There was no evidence of the concealment. For all that appears in the record, Willard, Lincoln, Myers, and the "examining officer" of the company may each have known of the alleged suicide.

4. Information as to the cause of Bernhard Dillenberg's death was waived by the company.

It has been already seen that the question in the application: "Brothers dead, ; age, ; cause of death, ," was not answered, (13.)

The acceptance of an application by an insurance company with some of the questions unanswered, or not fully answered, and the issuing of a policy thereupon without further inquiry, is a waiver by it of any information which might have been obtained by requiring an answer.

The justice of this proposition is so obvious, and the authorities so numerous, that it would seem to be idle to enlarge upon it. Wherever the question has arisen it has been decided as above stated, (*w*.)

Moreover, in this case the company knew by the former application that the question was not left unanswered because there was no brother dead, and the slightest diligence, the least sense of fairness on its part, required that it should inquire of Luchs and Dillenburg, or both of them, why it was that the question was not answered. If this had been done the whole story would have come out, and the company would have learned not only of the supposed suicide, but that Luchs and Dillenberg had both signed the application without knowing what was in it. But the company chose to remain quiet, and it could just as well now claim the right to defeat this policy by proving

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(*w*) Assurance Co. *v.* Insurance Co., 7 Gray, 261; Hall *v.* Insurance Co., 6 Gray, 185; Insurance Co. *v.* Mahone, 56 Miss., 180; Insurance Co. *v.* Daily, 65 Ind., 6; Insurance Co. *v.* Paul, 91 Pa. St., 520; Insurance Co. *v.* McCullough, 21 Ohio St., 176; Dilliber *v.* Insurance Co., 69 N. Y., 256.

the death of a brother by accident as it could by proving his death by suicide.

How the question as to "Brothers dead" came to be left unanswered in this application nothing in the evidence tends to disclose. Dillenberg being dead, it was impossible for Luchs to show by him what, if any, connection he had with the preparation of the second application. The only other sources of information on that subject are the agents of the company, from whose hands the application, as it was signed, came. The company did not see fit at the trial to ask those agents, or any of them, to explain this matter. It offered no evidence on the subject whatever. Every presumption, therefore, is against it. At the trial the counsel for Luchs sought in every way to have the jury pass upon the question of the fairness of Luchs's conduct in the transaction which resulted in the issuing of this policy. They were told that to entitle him to recover they must find that he took out the policy in good faith, and not for the purpose of speculating on Dillenberg's life, and that although the company prepared the application, and Luchs signed it without knowledge of its contents, he was not to be released from the effect of any misstatement it might contain if he was guilty of any fraud or concealment of material facts.

No instruction on this subject was asked by the other side; and the verdict therefore establishes the fact that Luchs's hands are clean.

The judgment should be affirmed.

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